



**CITY PLANNING COMMISSION**

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June 3, 1998/Calendar No. 23

N 980271 ZRM

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**IN THE MATTER OF** an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, to amend various sections of the Zoning Resolution of the City of New York relating to the Theater Subdistrict within the Special Midtown District (Article VIII, Chapter 1), the Special Clinton District (Article IX, Chapter 6) concerning use and bulk regulations and the preservation of theaters, and other related sections concerning the reorganization and relocation of certain provisions relating to pedestrian circulation and subway stair relocation requirements and subway improvements.

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The application for an amendment of the Zoning Resolution was filed by the Department of City Planning on January 7, 1998, to modify special zoning regulations and the boundary of the Theater Subdistrict within the Special Midtown District, and special zoning regulations of the Perimeter Area within the Special Clinton District. The Department's zoning proposal would strengthen and enhance the Theater Subdistrict through new and modified provisions that would result in the long term preservation of Broadway theaters and in development that would support Broadway theaters and complement the scale and character of the Subdistrict. The proposal would also provide a framework for the orderly growth and development of Eighth Avenue between 42nd and 56th streets including use and bulk controls. New controls would ensure that development along Eighth Avenue provide an enhanced streetscape and pedestrian environment, a sympathetic transition to the adjacent midblocks and be supportive of theater preservation goals.

The proposed text amendment includes: (a) a new mechanism to allow the transfer of available development rights from a "listed" theater (which are traditional Broadway theaters protected under zoning regulations) to sites within the Theater Subdistrict (including both sides of Eighth Avenue between 42nd and 56th streets) in exchange for retaining, preserving and maintaining the theater for legitimate theater use, ensuring the operational soundness of the theater and that any landmark features are maintained in good condition, and a contribution to a "Theater Subdistrict Fund"; (b) a special permit mechanism to grant additional floor area for new theaters within developments; and (c) several modifications to existing provisions within the Theater Subdistrict to reinforce the scale and character of the Subdistrict as well as promote theater and theater-related uses. These amendments affect the entire Theater Subdistrict.

The proposed text amendment also: (a) extends the Special Midtown District and the Theater Subdistrict to the west side of Eighth Avenue between 42nd and 56th streets, overlapping the Perimeter Area of the Special Clinton District; (b) identifies the "Eighth Avenue Corridor" as a Subdistrict within the Theater Subdistrict and proposes common density, use, and bulk regulations for both sides of Eighth Avenue; and (c) proposes urban design controls along Eighth Avenue and a "transition zone" on the west side to ensure an appropriate relationship between the high density development on the avenue and the low-scale character of the Preservation Area of Special Clinton District and Theater Subdistrict Core in the midblocks. These amendments affect primarily the Eighth Avenue Corridor.

Furthermore, the proposed text would relocate provisions regarding subway improvement and pedestrian circulation space having applicability in the city beyond Midtown, from the Special Midtown District to the general sections of the Zoning Resolution.

#### **RELATED ACTIONS**

In addition to the amendment of the Zoning Resolution which is the subject of this report, implementation of the proposed zoning text amendment also requires action by the City Planning Commission on the following application which is being considered concurrently with this application:

C 980272 ZMM      A zoning map amendment to extend the western boundary of the Special Midtown District, currently along Eighth Avenue, to a line 150 feet west of Eighth Avenue (coterminous with the underlying C6-4 zoning district boundary) overlapping a portion of the Perimeter Area of the Special Clinton District from West 42nd to West 56th Streets.

#### **BACKGROUND**

The Theater District is one of the region's most significant tourist attractions and economic generators. It contains over 40 Broadway theaters, more than 20 hotels, 200 restaurants and several cinemas and concert halls. Outside of London, no area has a greater concentration of legitimate theaters. Times Square, in particular, is a symbol of theater, entertainment and communication, while Broadway, internationally, is synonymous with theater. The theater

industry is a significant contributor to the city's economy bringing in investment from outside the city and generating, by some estimates, economic activity in excess of \$2 billion dollars a year. It is a magnet for tourists and for an array of businesses whose aggregate employment exceeds 250,000 jobs. The health of the Broadway theaters is crucial to the health of the theater district and the theater industry, and it is central to New York's role as the nation's cultural center and as a world city. While the long-term health of the Broadway theaters and theater industry depends on many factors, zoning has an important role to play. This zoning proposal seeks to modify zoning controls to encourage the preservation of Broadway theater and strengthen the theater district environment.

Eighth Avenue between 42nd and 56th streets is inextricably linked to both the Theater District to the east and the Clinton community to the west. At the same time, Eighth Avenue is the primary corridor linking 42nd Street and Columbus Circle. In addition to its strategic location, the Eighth Avenue Corridor has excellent mass transit, infrastructure, and services, and presents opportunities for new housing and commercial development. It is an area with numerous development opportunities and one that is experiencing significant development interest today. However, existing zoning regulations, which differ on both sides of Eighth Avenue, fail to establish a clear urban context that can unify the corridor and provide an appropriate transition to the lower-scale neighborhood streetscape to the east and west. The zoning proposal seeks to create such a context and ensure the orderly growth and development of Eighth Avenue, and at the same time, strengthen the theater district and theater preservation. This proposal does not include any change to the underlying zoning districts, but provides additional mechanisms for growth and development that are compatible with the surrounding area and supportive of the theater district and theater preservation.

## **HISTORY**

### **Special Midtown District**

The Department has over the past three decades undertaken several initiatives to preserve the Theater Subdistrict and the Broadway theater industry. The Special Theater District, adopted in 1967, was the first Special Purpose District to be established in the New York City Zoning Resolution. Its boundaries extended from West 40th to 57th streets and from Sixth to Eighth avenues in the western portion of Midtown where there was a high concentration of theaters and

concert halls. Prior to its adoption, there was significant growth in Midtown under the 1961 zoning, marked by a procession of towers and plazas along Park, Third and Sixth Avenues. The Special Theater District was established in response to a threat to the Broadway theater industry by the westward expansion of Midtown office development and included objectives to protect the commercial theater industry from displacement pressures. It also encouraged the construction of new theaters integrated with new developments through generous floor area bonuses.

During the seventies, few office developments were constructed in West Midtown where more sites were available and subway lines had greater capacity, despite floor area bonuses. Office construction still favored the location of East Midtown, raising issues of congestion and excessive density in that portion of the district. This led the Department to initiate the Midtown Zoning Study in 1979 to examine development issues affecting Midtown, including the Special Theater District.

The ensuing Special Midtown District, adopted in 1982, addressed several issues related to the development of the central business district (CBD) including addressing the congestion occurring on the east side of Midtown and providing a more predictable and regularized framework for development by providing more as-of-right mechanisms for development. Prior to the Special Midtown District, most major post 1961 development had received special permits. The Special Midtown District included a development strategy which identified growth areas (West Midtown and Midtown South), stabilization areas (East Midtown) and preservation areas (midblocks between Fifth and Sixth avenues adjacent to and north of the Museum of Modern Art). In response to close to two decades of special permit developments, the special district established zoning districts and controls to set a framework for future developments to be more "as-of-right". The framework established avenue and midblock zoning districts, reduced the amount of floor area achievable through non-discretionary bonuses, created more flexible height and setback regulations, and introduced mandatory district-wide elements such as pedestrian circulation space requirements, subway stair relocation, and retail and street wall continuity requirements on designated streets.

#### **Theater Subdistrict**

With the adoption of the Special Midtown District, the Special Theater District was re-

established as the Theater Subdistrict -- a subdistrict of Midtown. This was accompanied by rezoning the underlying districts as well as introducing new provisions to further strengthen and enhance the Theater Subdistrict.

### Density and FAR's

The 1982 development strategy for Midtown identified the Theater Subdistrict as the "Growth Area". Prior to 1982, the allowable floor area ratios (FAR) generally west of Sixth Avenue to west of Broadway were 15.0 FAR zones bonusable as-of-right to 18.0 FAR and by special permit to 21.6 FAR. The areas further west of Broadway to Eighth Avenue were zoned 10.0 bonusable to 12.0 as-of-right and 14.4 by special permit. Districts along Sixth, Seventh, Broadway, 42nd and 57th streets were rezoned from 15.0 to 18.0 FAR bonusable to 19.0 as-of-right and 21.6 by special permit, while the midblocks between Sixth Avenue and Broadway/Seventh Avenue remained at 15.0 (bonusable to 16.0 as-of-right and 18.0 by special permit) and between Broadway/Seventh Avenue and Eighth Avenue at 10.0 (bonusable to 11.0 as-of-right and 14.4 by special permit). To encourage development within a set time frame, the strategy also provided a six year sunset period, after which zoning districts would be down-zoned.

The City's development strategy shifted much of the growth of Midtown away from the eastern portion of the district to the western portion. The strategy, in the height of the commercial market in the late eighties resulted in significant office, residential and hotel developments along Broadway and Seventh Avenue within the Theater Subdistrict. The predominant building density continued to be 15.0 FAR to 18.0 FAR as-of-right, and above 18.0 FAR by special permit, similar to pre-Midtown Zoning developments. In 1988, the zoning districts within the Theater Subdistrict were rezoned to lower density levels consistent with sunset provisions established in 1982. Through this process of the rezoning and text amendments, avenue and midblock districts were clearly established.

### Theater Preservation

When first adopted, the Special Theater District included a bonus mechanism for new theaters within developments with the intention of making theater development economically viable. While five theaters were developed under this provision, several traditional Broadway theaters were demolished in the process of facilitating development of the new theaters. The 1982

revisions to the Theater Subdistrict responded by "listing" 44 theaters (predominantly free-standing traditional Broadway theaters with full stage and wings), thus precluding their demolition. The Subdistrict controls also introduced preservation mechanisms and incentives for the continuance of legitimate theater use ("Use Covenant") for the listed theaters within the Subdistrict. Theater preservation incentives included provisions allowing more flexible use of available development rights from listed theaters (use across zoning district boundaries), a more liberal landmarks transfer for those theaters that were landmarked (including interior landmarks), and a bonus for the rehabilitation of a listed theater.

The 1982 Midtown zoning also created a "Theater Advisory Council" comprised of representatives of the Theater industry and related professionals to advise the City Planning Commission with regard to theater preservation applications. In addition, the Theater Advisory Council would participate in the review of the district and recommend further zoning actions and planning proposals to strengthen the long term viability of legitimate theaters. In 1984, the Theater Advisory Council released a report which strongly advocated the need to preserve the land use, scale and character of the Theater Subdistrict. The report also included several zoning and land use recommendations to achieve those objectives. The major elements included: the landmarking of Broadway theaters (at that time, only two theaters were landmarked); a wider transfer mechanism for available development rights from listed theaters; urban design controls for street walls, setbacks, lighting and signage for the "bow-tie" (intersection of Broadway and Seventh Avenue); and the creation of a Theater Subdistrict Core to preserve the scale and character of certain midblocks within the district. Several of these recommendations were implemented in the succeeding years.

Over the following six years, several significant changes took place in the Theater Subdistrict. In 1984, the 42nd Street Development project, under the auspices of the State's Urban Development Corporation, was approved. The 42nd Street Development Project included the revitalization and reuse of nine of the Broadway theaters within the project area. The plan also included the redistribution of development potential within the project area, to the avenue sites along Broadway, Seventh and Eighth avenues and 42nd Street, while preserving the lower scale in the midblocks.

Between 1984 and 1988, over 30 Broadway theaters were successfully landmarked as recommended by the Theater Advisory Council. The landmarking of the listed theaters afforded them landmark protections and the modified landmarks transfer provisions which are applicable to both interior and exterior landmarked listed theaters. In 1987, the City Planning Commission approved text amendments that established the Theater Subdistrict Core and adopted carefully crafted street wall, setback, signage and lighting controls for the bow-tie intersection of Times Square.

In 1984, the Theater Advisory Council issued recommendations for modifying zoning regulations pertaining to the Theater Subdistrict including providing for a wider transfer of development rights from listed theaters to address land use issues arising out of both the "listed" status of the theaters pursuant to zoning as well as their subsequent landmarking. The concentration of Broadway theaters resulted in there being limited opportunities for utilization of development rights under existing provisions. Existing as-of-right controls allowed the use of development rights from listed theaters on the same zoning lot through zoning lot mergers and across zoning district boundaries through the existing theater preservation mechanism. Under the landmarks provisions, listed theaters that were landmarked could also transfer to adjacent sites (including across the street). The widespread landmarking of the theaters clustered within a confined geographic area, created a situation where theaters with available development rights competed for limited sites. Furthermore, as the existing theater preservation incentives were applicable to sites either sharing or adjacent to zoning lots containing listed theaters, opportunities for preserving legitimate theaters were also restricted.

In 1988, the City Planning Commission adopted a "theater retention bonus", a 1.0 FAR off-site bonus, available to developments sites within the Theater Subdistrict outside the Core in exchange for an agreement to retain a listed theater for legitimate theater use. There was no requirement that the development site be adjacent to the listed theater being preserved for legitimate theater use in order to receive a Theater Retention bonus. In fact, the requirement that the development site be outside of the Theater Subdistrict Core made the possibility of physical adjacency less likely given the concentration of listed theaters within the Core. The Retention bonus was adopted in lieu of the Theater Advisory Council's recommendation for a wider transfer of development rights which, at that time, was presented as a concept rather than

a developed proposal. The Commission adopted the Theater Retention bonus within the Theater Subdistrict recognizing that there was a strong land use rationale for the bonus, namely the retention of a theater for legitimate theater use within the Theater Subdistrict, and the corresponding reinforcement in the character of the Subdistrict as the foremost cultural center in the country.

Since 1982, few developments have utilized available development rights under existing theater preservation mechanisms. Since the controls were established, only five theaters have entered into a use covenant. Four theaters -- Belasco, Lyceum, Palace and Ritz -- were preserved by the provision allowing the use of available development rights from theaters across zoning district boundaries. In addition, the City Center theater was preserved through the rehabilitation bonus with its development rights used within the Cityspire project. Development rights from six listed theaters were used in new buildings on the same zoning lot as-of-right, with no use covenant required. No theater has been preserved through the Theater Retention bonus.

Currently 24 listed theaters have over two million square feet of available development rights for transfer. Because of the concentration of these theaters, there are limited opportunities under existing regulations for them to utilize or transfer their development rights. Over time, several of these theaters have been converted to other uses or are dark, in a state of disrepair, or temporarily closed. With the recent revitalization of the Times Square area, and the introduction of new and marketable types of entertainment related uses, the theaters are more vulnerable to development or conversion pressures. A more liberal transfer mechanism within a wider area would not only provide greater flexibility and opportunity for the transfer of development rights, it would also promote theater preservation by linking the transfers to these obligations towards preserving theater use.

### Theater Promotion

The Theater development bonus adopted in 1967 produced five theaters (Gershwin, Circle in the Square, American Place, Minskoff and Marquis) incorporated into new developments. In 1987, the bonus was eliminated as it had not been used for over a decade and because the amount of bonus and associated findings did not ensure optimal theaters despite the significant floor area bonus. Current changes in the theater industry have created a demand for both larger state-of-

the-art theaters and smaller more intimate houses. However, since the earlier Theater Bonus was eliminated, no new theater has been constructed. Providing an incentive for new legitimate theaters would facilitate the needed theatrical facilities and would address constraints on new theater development by eliminating or reducing the cost of land attributable to a new theater.

### **Eighth Avenue Corridor**

The treatment of both sides of Eighth Avenue between 42nd and 56th streets, was recognized as an issue before the 1982 Midtown Zoning was adopted. During the public review of the Midtown Zoning, issues were raised regarding the facts that only the east side of Eighth Avenue was included in the Midtown Special District and that the east side of the avenue had a different development potential and bulk regulations from the west side of the avenue. The west side of the avenue is within the Perimeter Area of the Special Clinton District, an area envisioned as a development area to redirect future development away from the Preservation Area, the residential core and centerpiece of the Special Clinton District. In response to the issues raised, the City Planning Commission in 1982 noted that the Department was exploring a proposal that would "put both sides of Eighth Avenue on an equal footing, overlapping both the Special Clinton and Midtown Districts." In 1988, with the adoption of the zoning text revisions to the Special Midtown District, the City Planning Commission reiterated that "a study of this [Eighth Avenue] should review the current differences in treatment of one side of the avenue from the other with an eye towards equalizing such treatment."

Eighth Avenue contains a broad range of land uses including a mixture of low-rise tenements, theaters, mid- and high-rise office buildings, several high-rise hotels and apartment buildings, and ground floor retail and service uses. The existing land uses also include parking lots or cleared sites, vacant residential buildings and underbulk commercial buildings presenting opportunities for redevelopment. Recent development activity on the avenue has included the construction of two new residential developments -- one on the east side between West 49th and 50th streets, and the other on the west side between West 50th and 51st streets. Because zoning regulations, including density, use and bulk controls, differ for each side of the Avenue, there is a need to establish a cohesive planning framework to ensure an appropriate land use and urban design context for Eighth Avenue that also responds to the adjacent neighborhoods to the east and west. Furthermore, with development taking place, there is an opportunity for that development to

create a better streetscape and pedestrian environment, and support the preservation of Broadway theaters.

## **EXISTING ZONING CONTROLS**

### **Theater Subdistrict**

#### Density and Floor Area Bonuses

The Theater Subdistrict is a high density commercial district where the existing underlying zoning establishes avenues and midblocks consistent with other areas in Midtown. The avenues and major crosstown streets including Sixth Avenue, Broadway and Seventh Avenue (north of 50th Street), and West 42nd and 57th streets within the Theater Subdistrict are generally zoned C5-3, C6-6 and C6-7 allowing a base FAR of 15.0. The intersection of Broadway and Seventh Avenue between 43rd and 50th Street, an area known as the "bow-tie", is zoned C6-7T to a depth of 200 feet allowing a base FAR of 14.0. The midblock portions between Sixth and Seventh avenues are zoned C6-6.5 and C6-5.5 which allow a base FAR of 12.0, and between Seventh and Eighth avenues are zoned C6-5 which allows a base FAR of 10.0. Both sides of Eighth Avenue between 42nd and 56th streets are zoned C6-4 allowing a base FAR of 10.0. Both sides of 41st Street and the northern side of 40th Street, between Seventh and Eighth avenues within the Theater Subdistrict, are zoned M1-6 allowing a base FAR of 10.0.

Several as-of-right bonus mechanisms are available in the district including urban plaza, theater retention bonus, and through block galleria bonus. These bonuses allow the permissible floor area ratio to increase by 1.0 FAR. However, for sites wholly within the Theater Subdistrict Core, an area bounded by a line 200 feet west of Sixth Avenue, 43rd Street, a line 100 east of Eighth Avenue and 50th Street, such as-of-right bonuses are not applicable. Several special permit bonuses are also available which vary based on the underlying zoning districts. These include the Subway Improvement bonus which allows a maximum of 20 percent increase above the base FAR; the Theater Rehabilitation bonus typically allowing 20 percent above the base FAR in most districts and 44 percent in 10.0 FAR districts; and the modified landmarks transfer from landmark theaters, allowing a 20 percent increase above the base FAR in most districts, except within the 14.0 and 15.0 FAR zones where there is no defined maximum FAR.

### Theater Preservation Mechanisms and Bonuses

Several provisions pursuant to Section 81-74 (Special Incentives and Controls in the Theater Subdistrict) for theater preservation are available to ensure the protection and preservation of Broadway theater. These include the following:

- Section: 81-742 (Restrictions on Demolition of Theaters) which designates 44 theaters as "listed" which are protected from demolition without a special permit;
- Section 81-744 (Floor area bonus for the retention of certain existing listed theaters) which allows a 1.0 FAR bonus for retaining a theater (50,000 square feet per theater);
- Section 81-745 (Floor area bonus for rehabilitation of existing listed theaters) which allows a 20 percent bonus generally in the Theater Subdistrict except for 10.0 FAR zones (C6-4, C6-5 and M1-6) where the bonus is 44 percent;
- Section 81-746, (Additional provisions for zoning lots divided by district or subdistrict core boundaries) to allow floor area to be transferred from listed theaters across district boundaries; and
- Section 81-747 (Transfer of development rights from landmark theaters) which modifies the standard landmark transfer provision (Section 74-79) for theaters within the Subdistrict applicable to both interior and exterior landmark theaters.

Each provision is subject to required assurances for the continuance of legitimate theater use pursuant to Section 81-743. Section 81-743 or the "Use Covenant" requires that the theater remain available for legitimate theater use for the life of the related development; that there is a commitment from the theater owner and/or operator for occupancy of the theater and its operation as a legitimate theater for a period of not less than five years and that there is a plan and program for periodic inspection and continuing maintenance of the theater.

### Use Regulations

The Special Midtown District identifies designated retail streets that are governed by regulations set forth in Section 81-42. Section 81-42 (Retail continuity along designated streets) requires that a portion of any new development, enlargement or extension that fronts (or is located within five feet of curb level) on a designated retail street should be limited to retail, personal services or amusement uses permitted under the underlying zoning districts with few exceptions. The

building's frontage is restricted to such uses except in certain cases (lobby or entrance space restricted to 40 feet or 25 percent of frontage), and entrances to subways with improvements associated with floor area bonuses, pedestrian spaces, waivers to street wall continuity, relocated subway stairs and through-block connections. In addition, Section 81-42 regulates transparency requirements. Within the Theater Subdistrict, 42nd and 57th streets, Seventh Avenue and Broadway are designated retail streets.

The Theater Subdistrict has several use regulations intended to promote uses consistent with the area. Use Group T regulations, pursuant to Sections 81-721 and 81-722, require that within an area bounded by West 40th Street, Eighth Avenue, West 51st Street and Sixth Avenue, any new development, extension or enlargements, allocate at least 80 percent of the frontage on a wide street and 50 percent on narrow streets to ground floor uses listed in Use Group T. Use Group T distinguishes between which uses are allowed on narrow and wide streets, and upper and ground floors. Furthermore, frontages of ground floor establishments on wide streets are restricted in size from a minimum of 10 feet to a maximum of 40 feet, except for theaters (Section 81-723). Other use regulations include the requirement for entertainment-related (ER) uses, pursuant to Section 81-724, which requires that developments that exceed 60,000 square feet within the Core devote five percent of floor area above 50,000 square feet to ER uses. The floor area allocation is generally required to be made on site, however, the City Planning Commission may authorize an off-site location within the Theater Subdistrict.

#### Height and Setback Regulations

Pursuant to Section 81-25, for all Midtown buildings, the height and setback regulations of the underlying districts including tower regulations are superseded by the provisions of the Special Midtown text. The Midtown text allows any development to conform to regulations as set forth in Section 81-26 (Height and Setback Regulations - Daylight Compensation) or 81-27 (Height and Setback Regulations - Daylight Evaluation). The general Midtown height and setback regulations permit a maximum street wall height of 90 feet on narrow streets, 120 feet on wide streets of 75- or 80- foot widths, and 150 feet on very wide streets of 100-foot width. The building would then be required to set back at least 10 feet, both on a narrow and wide street and would comply with the bulk envelope specifically tailored to the Midtown built environment. These regulations allow flexibility with regard to the placement of bulk through building design

and massing, while ensuring the goals of protecting light, air and openness of streets and between buildings.

Section 81-43, (Street wall Continuity along designated streets) regulates street walls on designated streets in the Special Midtown District. The requirements specify location, length or frontage, and height of street walls. Location requirements include providing street walls within 10 feet from the street line or within 10 feet from a permitted arcade's supporting columns at the street line. Length of street walls are required for at least 80 percent of the front lot line; and at a minimum height of 50 feet or four stories whichever is less on zoning lots with less than 50 feet frontage, and 85 feet or six stories (whichever is less) on zoning lots with frontages more than 50 feet. In the Theater Subdistrict, 42nd and 57th streets, and Broadway and Seventh Avenue are designated street wall streets.

Within the Theater Subdistrict special street wall and setback requirements pursuant to Section 81-75, exist for sites that front on Seventh Avenue and Broadway between 43rd and 50th streets (the Core). These regulations require a low base and deep setback above the base. In conjunction with special signage and lighting requirements (Section 81-73), they ensure that developments continue to add and enhance the Times Square signage and lighting as well as create the "bowl of light" effect in the bow-tie area.

#### Additional Regulations

The Midtown regulations (Section 81-45) require pedestrian circulation space in all new developments or enlargements inclusive of those within the Theater Subdistrict with over 70,000 square feet of new floor area on zoning lots over 5,000 square feet. The amount of space required is one square foot per 300 square feet of new floor area on lots above 20,000 square feet, and one square foot per 350 square feet on lots between 5,000 to 20,000 square feet. Several options are available to developments to satisfy the requirement including: sidewalk widening; corner circulation space; arcade; corner arcade; building entrance recess area; through block connection; subway stairway relocation or renovation and off-street rail mass transit access improvement. However, some of these options (arcades, sidewalk widenings, etc.) are not available on certain major streets (34th, 42nd and 57th streets, and Fifth Avenue) and subdistricts (Theater Subdistrict Core and Grand Central Subdistrict). The Midtown regulations also require

that developments adjacent to existing subway stairs relocate the stair within their property pursuant to Section 81-47.

### **Eighth Avenue Corridor**

#### Boundaries

The Eighth Avenue Corridor extends along Eighth Avenue from 42nd Street to 56th Street with its outer boundaries defined by existing zoning district lines which lie 150 feet west and 100 feet east of the avenue. Both sides are zoned C6-4 which allows a base commercial and residential floor area ratio (FAR) of 10.0. However, each side is regulated by their respective special regulations governing floor area, use, bulk (height and setback) and any urban design or special controls. The east side of the avenue is in the Theater Subdistrict within the Special Midtown District and is subject to regulations set forth in Article VIII, Chapter 1 of the Zoning Resolution. The west side of Eighth Avenue to a depth of 150 feet is the Perimeter Area of the Special Clinton District and is subject to special regulations set forth in Article IX, Chapter 6 of the Zoning Resolution.

#### Density and Floor Area Bonuses

Certain Midtown and Theater Subdistrict bonuses are available to the east side of the avenue. The permissible FAR may increase from 10.0 FAR to 11.0 through as-of-right bonuses (Urban Plaza, Theater Retention, Through Block Galleria) and 12.0 up to 14.4 through special permit (Subway Improvement, Theater Rehabilitation). The maximum floor area ratio permissible on the east side of the avenue with as-of-right incentives and special permits, in no event may exceed 14.4 FAR. The west side of Eighth Avenue between 42nd and 56th streets may increase its permissible FAR from 10.0 FAR to 12.0 as-of-right through the Inclusionary Housing bonus. The Inclusionary Housing bonus within the Special Clinton District requires off-site low-income units to be located within the special purpose district.

#### Use Regulations

For developments on the east side of the Avenue between 40th and 51st streets, Use Group T uses must be located on the ground floor. Certain sites on the east side which are partially located (50 percent or more) within the Theater Subdistrict Core would also be subject to the entertainment-related (ER) use requirement. The east side of Eighth Avenue, as a part of the

Theater Subdistrict, may be the recipient for off-site ER uses as well. The west side of Eighth Avenue does have any retail or ground floor uses requirements. However, it is subject to anti-harassment provisions and restrictions on the demolition of building with residential units to protect existing residential units from pressures of displacement.

#### Height and Setback Regulations

The east side of Eighth Avenue is regulated by the Special Midtown height and setback regulations. The maximum permitted street wall height on the avenue is 150 feet, while on the narrow streets it is 90 feet, above which the building envelope must comply with the provisions of Midtown height and setback controls. Currently, street walls are not required on the east side of Eighth Avenue. On the west side of Eighth Avenue to a depth of 150 feet, developments and enlargements are subject to the underlying C6-4 district height and setback regulations. Unlike the Perimeter Area generally along West 42nd Street which is subject to specific urban design controls, the west side of Eighth Avenue is regulated by a maximum street wall of 85 feet after which the building is regulated by 1: 5.6 sky exposure plane (beyond a 100 feet from the avenue, the sky exposure plane is 1: 2.7). Street walls are not required. Alternate height and setback regulations apply to this district allowing tower-in-the-park type development. The Preservation Area of the Special Clinton District which lies to the west of the Perimeter Area ensures the character and scale of new buildings in the midblocks by limiting the height of buildings to seven stories or 66 feet whichever is less.

#### Additional Regulations

The east side of the avenue is subject to the Pedestrian Circulation Space requirements and the Subway Stair Relocation requirements. The west side of Eighth Avenue is subject to Mandatory Tree Planting Provisions required in the Special Clinton District.

#### **THE PROPOSED ZONING TEXT AMENDMENT**

The proposed zoning amendment (which is subject of this application), would require text amendments to the Special Midtown District (Article VIII, Chapter 1), the Special Clinton District (Article IX, Chapter 6), Commercial District Regulations - Special Regulations (Article III, Chapter 7), Special Regulations (Article III, Chapter 7) and Administration - Special Permits by the City Planning Commission (Article VII, Chapter 4).

## **Proposed Text Amendments to the Theater Subdistrict**

### **Transfer of Development Rights from Listed Theaters (Section 81-744)**

The proposed text amendment would create a new mechanism to allow listed theaters to transfer their available development rights to sites within the expanded Theater Subdistrict boundaries, including the west side of Eighth Avenue. The transfer would require several conditions including: preserving the theater for legitimate theater use for the life of the related development; upgrading, if necessary, and continuing maintenance of a theater's use and structure; and contributing to a "Theater Subdistrict Fund" whose proceeds would be used for enhancement of theater use and preservation within the Theater Subdistrict.

The transfer of development rights would be through a City Planning Commission Chairperson's certification allowing, in general, sites within the Subdistrict to receive up to 20 percent of the underlying base FAR (which range from 10.0 to 15.0 FAR). Both sides of Eighth Avenue, which are in a C6-4 district, would be able to receive up to 4.4 FAR above the 10.0 base FAR by Chairperson certification. The proposed transfer would provide more opportunities for transfer while strengthening existing requirements for the continuance of legitimate theater use.

The proposed transfer mechanism would also include a special permit applicable in the high density districts (C6-7T, C5-3, C6-6, and C6-7) to allow transfers of an additional 20 percent of the base FAR, in addition to the proposed as-of-right transfer of 20 percent. Sites would be eligible for the additional transfer only if there are no transfers available from landmark theaters or other landmarks pursuant to Sections 81-747 and 74-79. The special permit would not allow any waivers to the existing height and setback regulations, or signage and urban design controls related to the bow-tie sites.

### **Modifications to the Use Covenant (Section 81-743)**

The proposed text would modify and strengthen existing obligations set forth in Section 81-743 to ensure the continuance of legitimate theater use. This would be achieved by requiring an engineer or architect's report certifying the condition and physical and operational soundness of the theater so that it may be used as a legitimate theater. In the event that the theater is not physically or operationally sound, a plan and program to upgrade the physical condition of the theater would be required to ensure its use as a theater and would show that adequate resources

are available for the timely completion for any upgrade. The obligations would include a program for continuing maintenance to ensure the theaters availability for theater use for the life of the related development.

In the case of an interior and/or exterior landmark theater, the architect and/or engineer would be required to be knowledgeable in historic preservation. The report would also certify the condition of all landmark features identified in the Landmarks Preservation Commission designation report and if necessary provide a program for bringing the features into good physical repair. The plan and program would also include the preservation and maintenance of such features in sound and proper condition.

The modifications to Section 81-743 or the "Use Covenant" also introduce two mechanisms that seek to recognize unique and unusual circumstances that individual theaters may confront in the future which could limit their ability to maintain legitimate theater use on a perpetual basis. The first mechanism would, by City Planning Commission special permit, allow theaters that have a use covenant to, after 25 years, change or discontinue the use of the theater as a legitimate theater provided that the change of use would provide a public benefit consistent with the objectives and purpose of the Theater Subdistrict. The second mechanism would be a City Planning Commission authorization to allow the change in use for an interim period of one year should the theater be substantially dark over the preceding five-year period. The change of use of the theater for an interim period would require that the interim use is consistent with the goals of the subdistrict and has a theatrical component, and that the new use would not preclude the continued availability of the theater for legitimate theater use. The proposed authorization would be limited to a one-year period which may be renewed two times (for a total of three years maximum) should conditions on which the authorization was granted, persist.

#### Theater Subdistrict Council and Theater Subdistrict Fund (Section 81-71)

The proposed text would require a monetary contribution to a "Theater Subdistrict Fund" by the theater owner transferring development rights from a listed theater. This contribution would be \$10 per square foot of the theater development rights transferred, the dollar amount determined as approximately 20 percent of the average sales price of land per square foot in the Theater Subdistrict. The value of the contribution could be adjusted periodically by the Chairperson of

the City Planning Commission based on changes in the assessed values within the Theater Subdistrict. The "Theater Subdistrict Fund" would be used to promote theater use and preservation within the Theater Subdistrict generally. Specifically, a portion of the funds would be required to be used for the periodic inspection and monitoring of the legitimate theaters and their compliance with required maintenance and use obligations. This would strengthen substantially the existing theater obligations. The proposed text would identify a process by which a not-for-profit entity (Theater Subdistrict Council) would govern and administer the Theater Subdistrict fund. The Theater Subdistrict Council, to be represented by the theater industry and related professionals, would, in addition to administering the Theater Subdistrict fund, replace the existing "Theater Advisory Council".

#### Additional Floor Area for New Theaters (Section 81-748)

The proposed text would create a new special permit to encourage new theaters within the heart of the Theater Subdistrict. The proposed special permit would be available within the high density districts -- the C6-7T, C5-3, C6-6 and C6-7 zones. The C6-7T is mapped between 43rd and 50th Streets on Broadway and Seventh Avenue to a depth of 200 feet, while the C6-7 is mapped along West 42nd Street, and along Broadway and Seventh Avenue, north of the Core. C5-3 and C6-6 districts are mapped along Sixth Avenue. The special permit would allow additional floor area for space occupied by or attributed to the new theater in developments and enlargements. The amount of additional floor area would be limited to 2.0 FAR and would only include all essential floor area associated with legitimate theater use (auditorium, stage, wings, dressing rooms, orchestra, balconies, lobbies, ticket areas, accessory offices, lounges and circulation). Furthermore, given the unique spatial and structural requirements of theaters, the new special permit would also allow modifications to the special street wall and setback regulations applicable including those special regulations within the bow-tie area to accommodate the new use. Such modifications would be subject to several findings including establishing that waivers are necessary for the functioning of the theater and would not unduly affect light and air on the surrounding streets.

#### Modifications to Pedestrian Circulation Space Requirements (Section 81-451)

The proposed text would modify the existing pedestrian circulation requirements to include "theater waiting space" adjacent to existing or new theaters within the Theater Subdistrict.

Standards for the theater queuing space would generally be consistent with some of those for other public spaces (urban plazas and through block connections). The creation of a new pedestrian circulation space category applicable within the Theater Subdistrict would encourage the provision of circulation space adjacent to theaters which would alleviate congestion and queuing on sidewalks, while providing a gathering area for theater go-ers.

An additional amendment to this Section would prohibit arcades from locating on either side of Eighth Avenue. The existing buildings on Eighth Avenue do not have arcades. Furthermore, the proposed text would designate Eighth Avenue as a Retail Continuity and Street Wall Continuity street. Given the existing context and the proposed regulations for Eighth Avenue, arcades would not be consistent with the goals for the corridor. Precluding arcades on Eighth Avenue would be similar to other major avenues, crosstown streets within the Theater Subdistrict (Broadway, Seventh Avenue and 42nd Street) and within Midtown (Fifth Avenue, 34th and 57th streets, and the Grand Central Subdistrict).

#### Modifications to Use Group T Regulations (Section 81-721 and 81-722)

The proposed text would eliminate the Use Group T requirement along Sixth Avenue and along Eighth Avenue between 40th and 51st streets. Current use regulations require "Use Group T" -- a list of uses compatible with the purpose and objectives of the Theater Subdistrict -- on the ground floor of developments and enlargements in area between 40th and 51st streets, between Sixth and Eighth Avenue. It would also modify the existing Use Group T regulations that would continue to apply elsewhere within the Theater Subdistrict by eliminating the 40-foot maximum frontage requirement that currently exists for ground floor establishments. This would provide more opportunities for different types of retail within the Theater Subdistrict.

#### Modifications to Entertainment Use Requirements (Section 81-724)

The proposed text would modify the requirement for sites partially within the Core, by requiring the amount of entertainment related uses to be provided be based on the floor area generated by that portion of the site located within the Core.

#### Modifications to Restrictions on Demolition of Theaters (Section 81-742)

With the extension of the Theater Subdistrict to the west side, the Martin Beck theater would be

located within the Theater Subdistrict and therefore eligible for "listing". The modifications to this section would include the "Martin Beck Theater" as a listed theater. This provision would prevent the demolition of the theater and qualify the theater for all preservation incentives within the Theater Subdistrict. Other changes include reorganization of existing text.

Elimination of the Theater Retention Bonus (Section 81-744)

The proposed text would eliminate the existing theater retention bonus which allows a 1.0 FAR floor area bonus (or 50,000 per theater) for the retention of a listed theater. This provision was adopted in 1987 and has never been used.

Modifications to the Theater Rehabilitation Bonus (Section 81-745)

The proposed modification would clarify the existing Theater Rehabilitation bonus to allow the timely rehabilitation of the listed theater, separate and apart from the associated development of the same zoning lot. The text would clarify "substantial completion" to the special permit as the theater rehabilitation and not the construction of the new or enlarged development.

Furthermore, the special permit would be modified to include findings related to neighborhood character.

Modifications to Additional provisions for zoning lots divided by district or subdistrict core boundaries (Section 81-746)

The proposed modification would clarify bulk regulations for zoning lots divided by the Eighth Avenue Corridor boundaries, and zoning lots which receive developments rights from listed theaters. Such provisions exist for zoning lots divided by Theater Subdistrict Core boundaries. Furthermore, zoning lots which include a listed theater are granted certain flexibility under this provision as well.

Elimination of Through Block Galleria (Section 81-748)

The proposed text would eliminate the 1.0 FAR as-of-right bonus for the provision of a through block galleria. The provision was adopted in 1982. Similar to the 20 percent FAR Plaza bonus which was reduced to 1.0 FAR in 1982, the through block galleria bonus replaced the previous special permit for which a maximum of 20 percent was allowed. The intention of the bonus (which only applied within the long blocks of the Theater District) was to encourage the

continuation of an existing pedestrian network. Since 1982, three through block gallerias and several through block connections (which meet pedestrian circulation space requirements) have been built. These have resulted in the growth of the pedestrian network within the Theater Subdistrict. However, since the bonus is not permitted in the core or within 200 feet of an avenue or Broadway, and there are limited through-block sites, with the exception of the 42nd Street site between Sixth and Seventh Avenue, there are practically no potential sites which could provide a through block galleria that would qualify for the bonus. Therefore, the text amendment proposes to eliminate this bonus. As a part of the proposed text amendment, any through block galleria bonus granted prior to the effective date of the proposed amendment would be grandfathered for a period of four years.

#### Relocation of Existing Sections (Section 37-03 and 37-07)

The proposed text would relocate the Pedestrian Circulation requirements and other related sections within the Midtown District (Section 81-45, 81-46 and 81-47) to Section 37-07 and Section 37-03. Article III, Chapter 7 includes special regulations that apply to developments in commercial districts. They include urban design controls, and subway stair relocation requirements. The pedestrian circulation requirements which may have wider applicability than Midtown would be included within the general Commercial District text. Subway stair relocation requirements, now found in the Special Midtown Text and Section 37-03, would be consolidated in one section. Similarly, the special permit provision for subway improvement bonus exists with the Special Midtown text and Article VII, Chapter 4 (Special Permits by the City Planning Commission). The Midtown provision would be consolidated in Section 74-634 (Subway Station Improvements) with minor reorganization.

#### **Proposed Text Amendments to the Eighth Avenue Corridor**

##### Changes to the boundaries of the Theater Subdistrict and the Special Midtown District

The proposed text would extend the existing western boundary of the Theater Subdistrict and the Special Midtown District to a line 150 west of Eighth Avenue to a depth of 150 feet between 42nd and 56th Street, overlapping that portion of the Perimeter Area of the Special Clinton District. The west side of Eighth Avenue would also continue to be within the Perimeter Area of the Special Clinton District and thus retain existing special regulations on the west side.

### Creation of an "Eighth Avenue Corridor"

In addition to extending the boundaries of both the Theater Subdistrict and Special Midtown District to overlap the Perimeter Area of the Special Clinton District, the proposed text would also identify the "Eighth Avenue Corridor" as both sides of Eighth Avenue generally between 42nd and 56th streets in the C6-4 district. The Eighth Avenue Corridor is subject to several use, bulk, height and setback regulations as set forth in Special Midtown District Regulations. The regulations would supplement the Special Clinton Regulations for the west side of Eighth Avenue, which would be retained.

### Floor Area Bonuses and Density

The proposed text would allow the Eighth Avenue Corridor to achieve an as-of-right density up to 14.4 FAR through the proposed transfer mechanism. In addition, the existing special permit bonuses on the east side would be made available to the west side. This includes the Theater Rehabilitation bonus and the Subway Improvement bonus, both by special permit. Furthermore, on the west side of Eighth Avenue (also within the Special Clinton District), the Inclusionary Housing Bonus, a 20 percent bonus as-of-right for the provision of low-income units on- or off-site (within the Preservation Area of the Special Clinton District) would continue to be available. The Urban Plaza bonus, a 1.0 FAR bonus currently available on the east side of Eighth Avenue, would be eliminated. Because the Theater Retention Bonus is proposed to be eliminated throughout the Theater Subdistrict, it would not be available in the Corridor. The maximum FAR achievable on either side of the avenue through as-of-right incentives or by special permit would be capped at 14.4.

### Use Regulations

The proposed text would designate both sides of Eighth Avenue as a Retail Continuity Street. In addition, Use Group T regulations would be repealed along the east side of the avenue between 40th and 51st Streets. Because the west side would remain within the Perimeter Area of the Special Clinton District, existing harassment and cure provisions and restrictions on demolition of existing buildings would continue to apply.

### Height and Setback Regulations

The proposed text designates both sides of Eighth Avenue as the "Eighth Avenue Corridor"

where special street wall, height and setback regulations apply. Along Eighth Avenue a street wall with a minimum height of 50 feet and a maximum height of 150 feet is required. However, within 15 feet of the intersection with a narrow street, the maximum street wall height on Eighth Avenue would be limited to 85 feet, similar to the maximum street wall proposed on the side streets. A setback of at least 10 feet above the maximum street wall height would be required from the building line.

Required street wall heights would be no less than 50 feet or greater than 85 feet along the narrow street and within 100 feet of Eighth Avenue. Beyond 100 feet, on the west side of the avenue, special regulations would apply to ensure a transition from the high density on the avenue to the low-scale character of the midblocks. This is achieved by requiring a minimum street wall height of 50 feet and a maximum street wall height of 66 feet for street walls located between 100 and 150 feet west of Eighth Avenue. In addition, beyond 125 feet west of Eighth Avenue, there would be an overall building height limit of 66 feet, except where an adjacent building exceeds 66 feet. In such cases, the portion of the development beyond 125 feet from Eighth Avenue could rise as high as the adjacent building. Similarly, sites on the east side of Eighth Avenue that are partially within the core would have a minimum required street wall height of 50 feet and maximum of 60 feet for that portion of the site within the core. An additional provision includes limiting the maximum street wall located within 100 feet of Eighth Avenue to 60 feet in height, should the new development be adjacent to a listed theater. This would ensure that new developments harmonize better with the landmark and listed theaters.

The tower portion of the building on the east side would be regulated by the Midtown controls. The west side of the avenue would be regulated by a minimum tower coverage of 33 percent and a maximum tower coverage of 40 percent, similar to other contextual districts. In order to allow greater flexibility, developments on the west side of Eighth Avenue could apply under the Midtown height and setback regulations above 150 feet to facilitate higher coverage buildings. However, the minimum tower coverage would remain under both options in order to limit the potential height of developments.

#### Additional Regulations

As the west side of Eighth Avenue would be a part of the Special Midtown District, pedestrian

circulation space and subway stair relocation requirements that apply on the east side, would now apply to the west side of the Avenue.

### **ENVIRONMENTAL REVIEW**

This application (N 980271 ZRM), in conjunction with the application for the related action (C 980272 ZMM), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 98DCP031M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on January 12, 1998.

### **PUBLIC REVIEW**

On January 12, 1998, this text change application was duly referred to Community Boards 4 and 5, Manhattan, the Manhattan Borough President and the Manhattan Borough Board for information and review in accordance with the procedure for referring non-ULURP matters.

#### **Community Board Public Hearing**

Community 4 did not submit a record of its public hearing to the Department. However, the Community Board submitted a letter to the City Planning Commission dated March 19, 1998, expressing their opposition to the application. The concerns raised by the Community Board are summarized below.

The Community Board expressed concerns regarding the transfer of development rights, stating that the "proposed Theater Air Right Transfer System would result in a number of conditions which we believe would encourage problematic development". These concerns were identified as: the unpredictability of development within a 50 block area; the preferential treatment to theaters setting a precedent; increase in density as a result of the transfer; the impact on landmarks; and a lack of public review.

The Community Board raised concerns regarding the proposed map change and language in the text which states that in case of a conflict or discrepancy between the Midtown and Clinton regulations, the Midtown regulations would supplement and supersede the Clinton regulations for the west side of Eighth Avenue. The Board felt that the text weakened the Special Clinton District. The Community Board also raised issues regarding the west side of Eighth Avenue including the increase in density, recommending that the FAR should be capped at 12.0 FAR, and to eliminate all bonuses except the Inclusionary Housing Bonus. The urban design controls were questioned in terms of creating symmetry on the avenue. The Board opposed the Midtown height and setback regulations option on the west side of Eighth Avenue. In addition, the Board raised concerns regarding the environmental impacts of the increase in density as a result of the proposal on pedestrian congestion, traffic, air quality, and infrastructure. They also discussed the need for an environmental assessment beyond a ten year period. Of particular concern were the impacts on the Clinton community including displacement and affordable housing and basic services.

Issues were raised regarding the Broadway Initiative (the group intended to be designated as the Theater Subdistrict Council); the modifications to the use covenant including the authorization to allow temporary use in the theater and the special permit to allow a change in use after 25 years; and the flat fee contribution to the Theater Subdistrict fund. The letter further stated that funding for the arts should be through the use of tax revenues.

Community Board 5 held a public hearing on this application on March 12, 1998, and on that date, by a vote of 27 in favor, 3 opposed, 1 abstention, and 4 present but not entitled to vote, adopted a resolution recommending disapproval of the application. The Board passed the following resolution:

**RESOLVED**, That to the extent that it can be demonstrated that the Broadway Theater Industry is in need of financial assistance, that such assistance should be provided by the City and State from tax revenues; and

**THAT**, the Board opposes any proposal to weaken the requirements for public review through a special permit process as provided by the City Charter and which would be waived by the transfer mechanism within this proposal; and

THAT, the utilization of development rights from listed theaters over a wide area is inappropriate because of the unpredictability of its results, the negative impact of increased density, the potential effect on existing landmarks and the precedent that could be set; and

THAT, the substantial burdens imposed by the application are disproportionate to the perceived benefits such that it is necessary to reject this application.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation approving the application with conditions on April 22, 1998.

The Borough President's recommendation included the following:

The Manhattan Borough President approves the Department of City Planning's proposed Theater Subdistrict text and map amendments subject to the conditions detailed below:

- that the west side of Eighth Avenue from 45th to 56th Streets be removed from the proposal;
- that any transfer of air rights require a Special Permit, rather than merely certification by the Chairperson of the City Planning Commission;
- That more specific details regarding the structure and goals of the Theater Subdistrict Council (Broadway Initiative) are spelled out in the zoning text amendment including that the Board must include affected Community Board Chairs, the Borough President and other elected officials and that aiding Off-Broadway and Off-Off Broadway productions is one of the objectives;
- that the Theater Use Covenant be for the life of the related development and that the Special Permits that allows for discontinuance after 25 years be deleted, and that the Temporary change of use (interim use) is eliminated;
- that the time frame for the inspection of the theater by a licensed engineer and/or architect is reduced to three years between inspections; and
- that the equity generated by the transfer of development rights by the theater owners be invested in retaining the existing theaters and creating new ones.

### **Borough Board Recommendation**

This application was considered by the Manhattan Borough Board who adopted a resolution on

April 16, 1998, by a vote of 11 in favor, 0 opposed and 1 abstention opposing the Department of City Planning's Theater Subdistrict text and map change amendments:

The Manhattan Borough Board opposes the Department of City Planning's proposed Theater Subdistrict text and map change amendments and urges an approach that addresses the issues raised by the Borough Board.

To summarize, the Borough Board resolution raised concerns regarding the wider transfer of development rights particularly the precedent it may set for other classes of buildings; whether a planning nexus had been established; impacts on other landmarks; the public review process; the provisions and mechanisms for the preservation of theater use; the appropriateness of zoning to support Broadway theaters; the absence of an environmental impact statement; the increased density on the west side of Eighth Avenue; the impact on the Clinton community, and the impacts of the wider transfer on the Inclusionary Housing bonus.

#### **City Planning Commission Public Hearing**

On April 15, 1998 (Calendar No. 3), the City Planning Commission scheduled May 6, 1998, for a public hearing on this application (N 980271 ZRM). The hearing was duly held on May 6, 1998 (Calendar No. 10), in conjunction with the public hearing on the application for the related action (C 980272 ZMM). There were 46 speakers in favor of the applications, and 33 speakers in opposition. Numerous written testimony, correspondence and petitions were received, both in support and opposition of the applications.

Those speaking in favor of the application (some of whom suggested modifications or had concerns) included: the Director of Manhattan Office of the Department of City Planning, the Borough President of Manhattan, and Counsel of the Landmarks Preservation Commission; representatives of organizations including New York Convention and Visitors Bureau, the Times Square Business Improvement District, the Real Estate Board of New York, Association for a Better New York, New York Building Congress, New York Restaurant Association and Broadway Association; several representatives of the theater industry and community; representatives of businesses in the area, developers, land use attorneys and individuals. The theater community who spoke in favor represented: the Broadway Initiative, the Broadway

theater owners, the Theater Development Fund, the League of American Theaters and Producers, Alliance of Resident Theaters New York, New York Shakespeare Festival, Actors Equity, Manhattan Theater Club, Playwrights Horizon, Roundabout Theater, Vineyard Theater and Inside Broadway; unions included Society of Stage Directors and Choreographers, International Alliance of Theatrical Stage, Treasurers and Ticket Sellers Local, United Scenic Artists, and Ushers and Doormen's Union; and playwrights, authors, lyricists and producers. Written testimony was received from Citizens Housing and Planning Council, and several theater groups and businesses.

The Department of City Planning presented the proposal, emphasizing its purpose, goals and benefits to the Theater District and to New York City. The presentation also highlighted that the proposal builds on over three decades of planning policy for the district, that the plan was well balanced and rational, and that the results of the proposal were predictable regarding both development and preservation, while the impacts were minimal. Finally, the Department's proposal along with the formation of the Broadway Initiative would promote the long-term health of the theater industry and the preservation of Broadway theater.

The Coordinator of the Broadway Initiative ("the Initiative") presented information on the Initiative, a non-profit organization and a broad-based coalition of the theater community including theatrical unions and guilds, commercial and non-for-profit producers, theater owners, and representatives of the business and public sector, and the intended group to be designated as the proposed "Theater Subdistrict Council". The testimony included: background regarding the Initiative's formation and representation; its stated goals of fostering new creativity, galvanizing production, developing new audiences, and encouraging investment; and its intended role in three vital areas -- production financing, audience development, and facilities oversight. The Coordinator also stated that the zoning proposal acted as a catalyst in the formation of the Initiative and that the transfer of development rights leading to preservation of Broadway theaters, a critical element of the proposal, was vital to the Initiative. The testimony also included support for the incentive to encourage new theaters and economic development of the theater industry.

The Counsel of the Landmarks Preservation Commission testified that the proposed transfer of development rights from theaters would not undermine the landmarks law. Furthermore, the proposed transfer would not adversely impact other landmarks in the Theater Subdistrict, which would continue to be governed by zoning provisions and landmark regulations applicable to landmark buildings. The Counsel added that the Department of City Planning had consulted with the Landmarks Preservation Commission to ensure that theater use covenant obligations include specific provisions to preserve, upgrade and maintain all the architecturally significant features of the theater identified in the Landmark Preservation Commission's designation report.

Those who spoke in favor emphasized the need to support Broadway theaters, recognizing its unparalleled role in the City's economy as well as in New York's cultural life. Organizations and individuals spoke in favor of various elements of the proposal including the transfer of development rights to preserve Broadway theaters, the modified use covenant, and the proposed incentive to build new theaters. There was widespread support for the Broadway Initiative and the zoning provisions requiring theater owners to contribute to the Initiative. Other comments included: the need to strengthen Off Broadway, and off-Off Broadway theater industry and the contribution this proposal would make to this effort; importance of preserving Broadway's small drama houses for straight plays and small musicals and the direct positive effect it would have on Off Broadway and off-Off Broadway theaters; and support for the Broadway Initiative's goals of audience development and production financing.

Those who spoke in favor also supported zoning controls for Eighth Avenue, particularly new height and setback controls designed to ensure more contextual development compatible with the existing character of surrounding neighborhoods. Several speakers stated that controls such as retail and street wall continuity would benefit the development of the avenue. One speaker representing a property owner on the west side of Eighth Avenue testified that the new urban design controls on the narrow streets would create a hardship and not permit reasonable development on the property.

Various theater groups and unions strongly supported the Broadway Initiatives, and zoning mechanisms that would preserve legitimate theater use within the district, and would generate funds for the Initiative. Non-profit theater groups also testified that a healthy Broadway, more

legitimate theaters and the Initiative's mandate would benefit the non-profit theater community by providing greater access to Broadway and creating a more stimulating environment for creative talent. The theater unions and guilds stressed the significance of strengthening job opportunities and employment to their members. Furthermore, restaurants, hotels and other businesses in the area testified that strengthening Broadway would benefit other businesses in the area as well and that collectively, restaurants, hotels and theaters were the major draw for tourists to New York. The zoning proposal would assist in the on-going revitalization of the Times Square area.

Some speakers who spoke in favor also expressed concerns regarding the proposed mechanism to allow the wider transfer of theater development rights in terms of the area of transfer, the amount of transfer, the administrative process through which such transfer would take place, the obligations imposed on theater owners, and the enforcement of those obligations. Concerns also related to the potential impacts of the proposal on the Clinton community.

The Manhattan Borough President stated her support of the zoning proposal, while reiterating several modifications which were submitted in her report. The recommendations included: withdrawing Eighth Avenue north of 45th to 56th streets as a receiving area for theater development rights; converting all transfers to be processed through a special permit, eliminating the special permit and authorization provisions allowing modifications to the use covenant, drafting additional text specifying in greater detail the goals and structure of the Broadway Initiative, including Community Board Chairs, the Borough President and elected officials within Initiative, requiring a three year inspection of the theaters, and encouraging equity received from the transfer to be invested in retaining existing theaters and creating new ones.

The President of the Times Square Business Improvement District testified that the Board had adopted a resolution in favor the zoning proposal, however several conditions were recommended. The BID suggested the west side of Eighth Avenue be eliminated north of 45th Street. Furthermore, the 14.4 FAR should only apply to the first 100 feet between 42nd and 45th Street, beyond which the area should be downzoned to 4.2 from the existing 10.0, thus extending the Clinton Preservation Area eastward. The BID further elaborated that any development using the Inclusionary Housing bonus could continue at 12.0 FAR over the entire

150 depth of the avenue. The BID suggested that any transfer above 20 percent should be by special permit. Other suggestions included requiring a minimum street wall height of 85 feet along Eighth Avenue, and requiring City Planning to certify for each new development utilizing the proposed mechanism, that the resultant development would not unduly affect pedestrian circulation in the area.

Several land use attorneys and a former counsel to the Department of City Planning spoke in support of a wider transfer mechanism for listed theaters to the defined area of the Theater Subdistrict. The former counsel indicated that the use of floating developments was justified and that a land use rationale was consistent with the underlying principles of the Theater Subdistrict and zoning. In their testimony, they recounted other examples where a wider transfer has been adopted within New York City. One attorney highlighted benefits that would be accrued by utilizing a wider transfer in this case including theater preservation and improvements, and ameliorating blight on Eighth Avenue. The President of the Real Estate Board of New York also testified in favor of the wider transfer explaining that its use was not a new concept, that floating developments rights have been used selectively and judiciously, in part to bolster economic development and encourage new investment, and in this case, such transfer would benefit, not only the immediate block with the theater but the whole area.

Those who spoke in opposition included representatives of the affected community districts, various community and civic groups, elected officials, and residents and businesses of the Clinton community. Community Board representatives included the Chairpersons and Land Use Chairs of Community Boards 4 and 5. Civic and community organizations included the Municipal Arts Society, the Historic Districts Council, the American Institute of Architects, Women's City Club of New York, Queens Civic Congress, Civitas, Special Clinton District Coalition, Committee for Environmentally Sound Development, Coalition for a Livable Upper West Side, Housing Conservation Coordinators and various block associations. Elected officials included two City Council Members representing council districts 3 and 6 on the west side of Manhattan, two New York state senators representing the 27th and 30th districts and two New York state assembly members representing the 64th and 67th districts. In addition, written testimony was received from Community Boards 2, 3, 6, 7, 9 and 11 in Manhattan, and from Community Board 9, Queens, New York Landmarks Conservancy and the Historic Neighborhood Enhancement

Alliance. Several petitions were also submitted signed by residents and businesses from the Clinton community.

Most of the speakers who testified in opposition raised several broad conceptual issues regarding the zoning proposal. Others identified possible changes, additional analyses and follow-up tasks to improve the proposal.

Community Board representatives, various civic and preservation groups, and residents questioned the appropriateness of zoning to support the Broadway theater industry, and questioned whether there were better ways to achieve the same end. The Community Boards, elected officials and several others who testified, while supporting Broadway theater and recognizing its city-wide benefits, believed that the industry should be supported by city-wide tax incentives, where the burdens would be shared by all New Yorkers and not two community districts. In the same vein, several speakers questioned the land use rationale for the proposal, arguing that it was an economic development initiative and that zoning was an inappropriate tool for supporting a particular industry. Some speakers also questioned whether the proposed zoning mechanism would be effective in achieving the Department's stated goals of supporting and strengthening the theater industry and preserving legitimate theater use within the Theater Subdistrict.

Community Board 4 and 5, elected officials, civic and preservation groups, and other individuals, all raised concerns regarding the precedent-setting nature of the wider transfer of development rights, its impact on other landmarks in the area, and on other classes of buildings all over the city. Several speakers stated that the zoning proposal would allow special treatment to a particular class of buildings (theaters), granting them privileges beyond what is typically granted to buildings having landmark status. This would set a precedent by which other classes of buildings, particularly churches and religious institutions, all over the city would request similar privileges. Community Board 4 and 5, and civic groups including American Institute of Architects (AIA), Municipal Arts Society (MAS) and Historic Districts Council (HDC) argued that the wider transfer within the entire Theater subdistrict would weaken the nexus between the granting and receiving site, thus countering rational planning principles. Both the Municipal Arts Society, as well as the American Institute of Architects, urged the Commission to consider a

smaller area of transfer. MAS suggested alternative criteria for receiving areas based on an expanded definition of "chain of ownership" where theaters could float the developments rights to other theaters under the same ownership. A second alternative was to identify a smaller geographic area around the theater. They suggested two blocks to the north and south and one block east and west of the block that contained the theater.

Community Board 5, the Historic Districts Council, Queens Civic Association, Coalition for a Livable West Side, an elected official and others brought up the fact that in 1988, the City Planning Commission had rejected a proposal to allow theater development rights to transfer within a larger area. Speakers questioned the validity of the proposal in light of the earlier statement. Speakers identified issues that were raised at that time which apply to the current proposal, including precedent, nexus and impact on landmarks.

Community Boards, elected officials, civic and preservation groups including Civitas, and residents expressed concerns that the full impacts of the proposal could not be evaluated without an Environmental Impact Statement (EIS). Several speakers were concerned that the EAS found no adverse impacts as a result of the proposal. Civitas questioned the Department's method of evaluation and urged that a generic EIS be prepared which would evaluate the full build out of the proposal. Community boards stressed the need for community input and rigorous public review for the wider transfer mechanism. Several who testified, including elected officials and civic groups, recommended a special permit process for the transfer which would be subject to ULURP (Uniform Land Use Review Procedure). A particular concern was the unpredictability of the wider transfer and the impacts of the resultant developments on infrastructure and services. Community Board 5 and other groups including the AIA indicated concerns related to traffic and pedestrian circulation within the Theater Subdistrict Core.

There was also opposition from Community Board 4 and 5, elected officials and residents and businesses from the Clinton community towards the inclusion on the west side of Eighth Avenue within the Theater District and as a receiving area for development rights. There was widespread concern regarding the impacts of the proposal on the Clinton community. Issues were raised regarding the effect of 14.4 FAR on the west side of Eighth Avenue on neighborhood character, infrastructure and services, traffic and pedestrian circulation, and affordable housing and rent

levels within the community. Several speakers suggested that the increased FAR levels would encourage development on the west side. Furthermore, the speakers indicated that the proposal would result in high-rise towers which would adversely effect the existing scale of Eighth Avenue and in the Clinton Preservation area to the west and would cast shadows on the District. Some of the speakers also indicated the 14.4 FAR would result in office development and encourage large retail stores on the Avenue.

Community Board 4 was concerned with the proposed text and related map amendment which expanded the Special Midtown District and the Theater Subdistrict to the west side of Eighth Avenue overlapping the Perimeter Area of the Special Clinton District. The Municipal Arts Society recommended eliminating a portion of the west side of Eighth Avenue.

Many speakers, including both Community Boards, testified against allowing transfers or any other bonuses on the west side of Eighth Avenue as it would compete with the existing Inclusionary Housing bonus, the only bonus available on the west side under current zoning. Furthermore, several speakers expressed concerns that the development taking place as a result of the zoning action would increase both residential and commercial rents in Clinton, increase tenant harassment in the area, and displace many artists, actors and employees of the theater industry.

Several of those who testified including community boards, American Institute of Architects and the Historic Districts Council, raised concerns regarding the Broadway Initiative. While most supported the goals of the Initiative, there was concern regarding the success of the organization, and the implications should the coalition fail. Several speakers pointed out that the success and results of the Initiative were unpredictable, and that the contribution of the theater owners through the transfer of developments rights, was a limited and unreliable revenue stream. The Community Boards and civic groups were also troubled by the role of the Initiative in monitoring and enforcing the theater owners obligation to preserve theater use and maintain the theater. Moreover, they were concerned that there existed an inherent conflict of interest granting the Initiative an enforcement role as the theater owners would be a part of the Initiative. Speakers also questioned why the Broadway Initiative could not move forward without the zoning proposal.

A few speakers stated that they were unconvinced by the goals of the proposal, particularly to support and strengthen the theater industry. Several of these speakers questioned whether the Broadway theater industry required any assistance, citing that the Broadway theater was healthy, that most theaters were lit and were running at capacity. Furthermore, some speakers suggested that the proposal would benefit theater owners and developers, and that there was limited public benefits achieved through the zoning proposal.

A number of civic groups and elected officials suggested modifications to the proposal. Municipal Arts Society, Women's City Club, American Institute of Architects and Historic Districts Council testified that the proposed modifications to the use covenant weakened existing controls by providing a special permit process available after 25 years to discontinue theater use and an authorization to allow temporary use within the theater. Some suggested eliminating these provisions from the proposal. Speakers were also concerned that the obligation for periodic inspection was reduced from every three years to ten years, which would be too long a period. They recommended that the proposal reinstate a three year period.

Several speakers who spoke against the proposal, including the AIA and Women's City Club, supported the urban design controls for Eighth Avenue, including retail and street wall continuity requirements. The AIA, however suggested that the urban design controls could be further refined.

## **CONSIDERATION**

The Commission believes that the proposed text amendment (N 980271 ZRM) as modified herein, in conjunction with the related map amendment (C 980272 ZMM) is appropriate. The Commission believes that the zoning proposal is a well considered and rational land use plan for the Theater Subdistrict and the Perimeter Area of the Special Clinton District. It will strengthen and enhance legitimate Broadway theater and the Theater Subdistrict, and provide for more appropriate and better development along Eighth Avenue between 42nd and 56th streets that is also supportive of theater preservation goals.

## **BROADWAY THEATER AND THE THEATER SUBDISTRICT**

Broadway theater is one of the most significant economic and cultural institutions in New York City. The industry generates in excess of \$2 billion dollars a year and directly accounts for some 250,000 full- and part-time jobs. According to a recent Port Authority study, Broadway draws more tourists to the city than any other institution. It has a unique place in New York's cultural history and is irreplaceable in the City's creative life. The theater district is one of the most well known areas in the world. The concentration of over 40 Broadway theaters, in particular, makes the area unique. Internationally, Broadway is synonymous with theater. The health of Broadway theater and the theater industry is crucial to the health of the Theater District.

The City has a commitment to both the Theater District and Broadway theater which stretches back over three decades. Furthermore, the City has long-endorsed land use efforts to promote and preserve theater use and address the land use and economic development pressures associated with the concentration of theaters and the expansion of the Midtown central business district to the west. This commitment was first represented through zoning with the establishment of the "Special Theater District", the first special district to be adopted. The specific intent of this special district was to protect the commercial theater from development pressures. Subsequently, in 1982, it was re-established as the "Theater Subdistrict" -- a defined area within the Special Midtown District extending from West 40th to 57th streets and from Sixth to Eighth avenues. Since then, the City has sought to strengthen the subdistrict and the preservation of legitimate theaters through zoning amendments enacted in 1987 and again in 1988, and the landmarking of over 30 Broadway theaters. Taken together, these actions over the last 30 years have recognized the Theater Subdistrict as a distinct and unique area with a set of land use regulations designed specifically to preserve legitimate theater use, recognizing that these uses are central to the land use and neighborhood character of the District and vitally important to the City. As articulated in the Zoning Resolution, one of the primary purposes of the district is to, "preserve, protect and enhance the character of the Theater Subdistrict as a location of the world's foremost concentration of legitimate theaters and an area of diverse uses of a primary entertainment and entertainment-related nature".

The Commission is cognizant of the added pressures on, and development threats to theaters posed by the success of Times Square and the expansion of the CBD. The Commission believes

these threats are significant and could, without further land use regulation, result in the further loss of legitimate theater. The concentration of Broadway theaters, their low-scale and their location in an area zoned for high density office buildings make them susceptible to conversions to alternative uses, demolition, or development above the theaters using available development rights. The Commission notes that despite several efforts by the City to protect legitimate theaters and the district, current land use provisions have not been widely used. To date, only five theaters are required to maintain legitimate theater use. All others may convert as-of-right to non-theater uses, as several have done already. The Commission believes that with the City's expanding economy, improved quality of life, dramatic crime reductions, and regulations to control adult entertainment establishments, there is a unique opportunity to harness market forces to better support legitimate theater and further theater district goals.

### **Eighth Avenue Corridor**

The Commission recognizes that several land use and zoning issues remain unresolved regarding Eighth Avenue between 42nd and 56th streets. Eighth Avenue is governed by different zoning and land use controls on the east and west side of the Avenue. Straddling two distinct special districts -- the Theater Subdistrict and Midtown on the east, and the Perimeter area of the Special Clinton District on the west -- existing controls fail to establish an appropriate framework for growth and development along the Avenue. The Commission notes that with each major zoning initiative in the area, including the 1967 adoption of Special Theater District and the 1982 and 1988 Midtown Zoning, the unequal treatment of Eighth Avenue has been raised as an issue needing to be addressed.

Eighth Avenue is strategically located with excellent access to mass transit, infrastructure and services. It is characterized, however, by several vacant and boarded up buildings, and low-rise commercial buildings, interspersed with high-rise residential, hotel and office buildings. Due to the upswing in the market, it is likely that Eighth Avenue will undergo considerable redevelopment in the near- and long-term. This is evidenced by two residential developments currently under construction on Eighth Avenue. The Commission believes new regulations are needed to ensure that future development enhances the streetscape, is more compatible with the neighborhoods to the east and west, and is supportive of theater preservation goals.

## **THE ZONING PROPOSAL**

The Commission believes the Department's rezoning proposal addresses long-standing issues facing both the Theater Subdistrict and Eighth Avenue. It addresses fundamental land use problems facing the theater district and provides a workable mechanism to reduce the potential loss of theater venues and retain a lower scale on the midblocks. The proposal also provides a set of controls to promote the orderly development of Eighth Avenue while allowing this development to support theater preservation goals.

The proposal has several elements that will strengthen and enhance Broadway theater and the Theater Subdistrict. Most significant, the proposal introduces a new theater preservation mechanism to encourage the preservation of Broadway theater for legitimate theater use. This new mechanism would allow a wider transfer of development rights from listed theaters in exchange for preserving the theater for legitimate theater use and other preservation obligations. The proposal also includes the creation of a new incentive to encourage the development of new theaters, and modifications to existing provisions that would preserve and protect legitimate theater use and complement the scale and character of the district.

The proposal also establishes a comprehensive set of zoning controls for both sides of Eighth Avenue. These include density, land use, and bulk controls, including urban design controls, to ensure that development on Eighth Avenue is consistent and compatible within the existing context of both the Theater Subdistrict and the Special Clinton District. Furthermore, design controls would ensure that development is more sympathetic to the lower scale midblocks of both the Clinton Preservation area to the west and the Theater Subdistrict Core to the east.

## **WIDER TRANSFER OF DEVELOPMENT RIGHTS**

The Commission believes that the new theater preservation mechanism is an appropriate and effective zoning tool to preserve Broadway theaters for legitimate theater use over the long term and would help secure the future of Broadway theaters, the district and the industry. It would allow listed theaters with available development rights to transfer to receiving sites anywhere within the Theater Subdistrict including both sides of Eighth Avenue between 42nd and 56th Street. In exchange for the wider transfer, the theaters would be required to enter into a use covenant that would preserve and maintain the theater for legitimate theater use. Furthermore,

a portion of the proceeds from the sale of the development rights would be contributed into a "Theater Subdistrict fund" to be used generally to further strengthen and enhance the Theater Subdistrict and Broadway theater, and specifically for monitoring and enforcing obligations associated with the transfer of development rights. The proposal also strengthens the use covenant to ensure the long term use of the theater for legitimate theater use, and the preservation, upgrade and maintenance of the theater including its landmark features.

The Commission recognizes that existing theater preservation incentives have had limited success. Over the past 15 years, only five theaters (Belasco, Lyceum, Ritz, Palace, and City Center) of the 44 listed theaters have entered into preservation covenants. Furthermore, the Commission notes that there are 24 theaters (including the Martin Beck theater which currently is not listed) that have over two million square feet of development rights. The existing mechanisms for theater preservation and for transferring theater development rights have not been effective. Moreover, the Theater Retention bonus -- which is similar to a district-wide transfer -- has never been used.

The Theater Retention bonus was adopted in 1988 to broaden the opportunities for theater preservation. The Commission noted in their 1988 report that "in considering the factors that have limited the use of the rehabilitation of theater buildings -- the emphasis on major physical rehabilitation of the theater building and the requirement that only listed theaters immediately adjacent to a development site may utilize these bonus provisions -- the staff concluded and the Commission concurred, that it would be appropriate to supplement the current theater incentives with a measure of broader applicability." The Commission adopted the Theater Retention bonus to apply to all listed theaters and not only those adjacent to development parcels.

With only five theaters required to maintain legitimate theater use, any other theater may convert as-of-right to alternative uses as several have done so already. Moreover, the new prosperity of Times Square increases the threat that legitimate theaters will be converted to non-theater use. These conversions often require physical changes that make it difficult to revert to traditional theater use. Over time, this will undermine the land use character of the district. The Commission believes that the transfer mechanism provides an alternative to conversions and would assure the long term preservation of Broadway theater and legitimate theater use. It would also reduce the likelihood that concentrated development rights would be used on the

midblocks above theaters.

The Commission heard a significant amount of testimony in opposition of the wider transfer mechanism. Several speakers, including both affected community boards, various civic groups, several elected officials, residents and members of the public expressed concerns regarding the wider transfer mechanism including the potential precedential nature of the transfers, the geographic scope of the transfer, and the underlying land use rationale for the proposal respecting one particular use.

The Commission carefully considered these comments. It finds, however, that the wider transfer has a strong land use planning rationale and that it is a legitimate use of zoning in this area. Moreover, the Commission finds that the wider transfer is part of a well considered and carefully crafted plan that will result in predictable developments on receiving sites while furthering the long-standing objectives of the Theater Subdistrict.

The theater obligations required in exchange for the wider transfer directly promote the purposes of the Theater Subdistrict articulated in the Zoning Resolution, namely "to preserve, protect and enhance the character of the Theater Subdistrict as the location of the world's foremost concentration of legitimate theaters and an area of diverse uses of a primarily entertainment and entertainment-related nature." The upgrade and ongoing use of the listed theaters, the activities of the Theater Subdistrict Council that will benefit from the contributions, and the relief from development pressures on sites occupied by the theaters are subdistrict-wide benefits that more than justify the shift in development rights from sites occupied by theaters to other sites within the Theater Subdistrict.

The area comprising the Theater Subdistrict has been strongly identified with legitimate theaters for over three decades. The Special Theater District, created in 1967, was the first special district established in New York City. The specific objective of that Special District was to protect the commercial theater industry from displacement pressures. The Special Theater District was replaced by the Theater Subdistrict when the Special Midtown District was created in 1982, but the focus on preserving and promoting theater use within the area remained. In the ensuing years, additional provisions and incentives for protecting and promoting theater use were adopted

specifically in the Theater Subdistrict. The underlying rationale for those District-wide controls was that the entire Theater Subdistrict area was identified with and benefitted by the presence of the theater industry. For example, many developments within the Theater Subdistrict have to provide for a certain amount of floor area devoted to "entertainment related uses" regardless of their immediate proximity to a theater. This "burden" to a developer was justified by the "benefit" of being in the midst of a vital theater industry.

The concerns expressed that any transfer of development rights or floor area bonus associated with theater maintenance and preservation must be on a physically adjacent lot does not accord with the City's past practice or even the existing provisions of the Theater Subdistrict. As noted above, there are certain mandatory requirements imposed on developments within the Theater Subdistrict even if they are not immediately proximate to a theater. In addition, the existing provisions of the Theater Subdistrict text allow for the permissible floor area of development parcels to be increased throughout the Theater Subdistrict outside the Theater Subdistrict Core in exchange for agreeing to retain a listed theater. The Theater Retention Bonus allows for a development located on a site within the Theater Subdistrict but outside the Core to increase the permissible floor area on the development parcel by 1.0 FAR in exchange for a theater owner's agreement to use its existing theater for theater use. The text explicitly indicates that the development parcel need not be adjacent to the theater parcel. In fact, the text provides a disincentive for developing adjacent to the theater by excluding parcels within the Theater Subdistrict Core where the majority of the theaters are located. The 1.0 FAR increase is by a non-discretionary City Planning Chairperson certification. The properties able to take advantage of the existing retention bonus are exactly the same as those that could receive transferred development rights under the proposed action.

Another example of where the Zoning Resolution allows for additional floor area in a development in exchange for an amenity that is not physically adjacent to the development is the Inclusionary Housing bonus. These provisions allow for a development to obtain up to a 20 percent floor area bonus in exchange for the provision of affordable housing within a one-half mile radius of the development, or within the same community board. The provision would allow, for example, a development at 110th Street and Central Park West to receive a floor area bonus based on the provision of affordable housing at 60th Street and Eleventh Avenue. The

nexus relied on in the Inclusionary housing context is the commonality of interest community boards have in providing for affordable housing within its boundaries. Similarly, the nexus allowing for the transfer of air rights within the Theater Subdistrict is the long-standing, established, land use interest in protecting and promoting theaters and theater-related use within the area encompassed by the Theater Subdistrict.

The Commission firmly believes that adoption of the proposed wider transfer would not set a precedent. As previously stated, the Commission believes that the wider transfer responds to a unique set of conditions and land use issues that are not replicated elsewhere within the City. The Commission also notes that listed theaters, unlike any other class of buildings, already have been identified through zoning and public policy as a class of buildings that require restrictions, protections and privileges. No other class of buildings have been restricted by zoning to preserve, not only its structure, but the use that takes place in those structures. The Commission recognizes that since the theaters were listed (which pre-dates their landmarking) and were restricted from demolition, zoning provisions and incentives were geared towards preserving and maintaining such buildings including their use. Furthermore, certain privileges were granted to listed theaters at that time, including a more liberal use of available development rights. In addition, landmarks provisions for listed theaters were also modified which granted greater advantages to landmarks in their use of developments rights. In fact, contrary to certain testimony, the Department's proposal is in keeping with several decades of public policy regarding Broadway theaters and zoning.

The Commission also notes that a wider transfer of development rights as a zoning and preservation tool to meet a specific goals related to unique areas has been used nation-wide. Development rights transfers are used for the preservation of landmarks in many jurisdictions and is used in many other jurisdictions to preserve cultural and historic districts, environmentally sensitive areas and to protect and maintain permanent open space. The Commission also notes that a wider transfer has been used previously in New York City. It was used in the South Street Seaport Special District, a waterfront area adjacent to the Financial District of Lower Manhattan to achieve specific preservation goals for the area. Similarly, the Grand Central Subdistrict was created in 1992, to address the available development rights of the Grand Central Terminal in the heart of the most dense area in Manhattan in order to preserve one of New York's greatest

landmarks, and to establish better circulation and pedestrian connections to the terminal. These special districts were enacted after intensive study. Similarly, the Theater Subdistrict is one of the most intensively studied areas in the City and the proposed wider transfers further long-established land use goals.

In response to issues raised that zoning should not be used to aid specific industries, the Commission notes that the wider transfer is intended to preserve and enhance legitimate theater use and the commercial Broadway Industry, as well as to advance long-established land use goals. This is one of the central tenets of the Theater Subdistrict, which was enacted to protect Broadway Theater. The Commission also notes that zoning in New York City has been used elsewhere to protect an industry. The zoning policy for manufacturing uses, adopted in 1974, included provisions to protect and preserve manufacturing uses through preservation requirements in loft districts. Conversion of loft spaces to other uses required several obligations. In certain districts, it required manufacturing uses to be located on or off-site and established use restrictions on properties. In other cases, it required a payment into a fund to assist the relocation of manufacturing uses within the City.

The Special Garment District is another example where zoning has been used to protect and preserve an industry that is geographically based and neighboring Midtown. Similar to the Theater Subdistrict, the Garment Center has provisions to protect the Garment Industry from displacement pressures. In this context, the Commission recognizes that zoning has been used effectively as an economic development tool. Furthermore, in the case of the Theater Subdistrict, the proposal addresses both land use and economic development issues.

The Commission heard testimony from the Municipal Arts Society (MAS), the American Institute of Architects (AIA) and others with recommendations to limit the area of transfer to blocks in closer proximity to the subject theater or to allow transfers only from smaller theaters. The MAS suggested a receiving area as two blocks to the north and south and one block to the east and west of the block containing the subject theater. An alternative proposal related to expanding the definition of "chain of ownership" for the theaters, where development rights could be floated between theaters with the same ownership. The Commission understands the concerns that civic groups have expressed. However, it believes that the District-wide transfer is

appropriate and is based on sound land use policy. The proposed wider transfer is intended to be usable allowing more opportunities for theater preservation throughout an area historically identified with the theater industry. In this regard, the Commission believes that the District-wide transfer would better accomplish those goals.

The Commission believes the proposed mechanism must be a flexible provision with wide applicability to all 24 listed theaters with available development rights, regardless of their, size, location and adjacency to development sites. It notes that transfers from large theaters will provide revenues for reinvestment in the industry, and that the required contribution to the Theater Subdistrict Fund will benefit the smaller dramatic houses. Furthermore, the non-discretionary certification process would ensure that the mechanism is usable, thus promoting more theater preservation, while at the same time, ensuring that all of the theater owner obligations and conditions for transfer are met.

The Commission is confident that the use of the proposed mechanism will reap substantial benefits for the Theater Subdistrict and New York City on the whole. It would significantly reduce over the long-term the future loss of traditional Broadway houses as venues for legitimate theater. Furthermore, it would effectively safeguard the condition of such theaters through a modified and improved use covenant. The Commission also notes that the monies contributed to the Theater Subdistrict fund would increase the level of monitoring and enforcing of the theater owners' obligations, as well as promote, protect and support the theater industry.

While most of the listed theaters with available air rights are landmarks, the Commission does not agree with the analogy made by some to individual landmark transfers and the requirement of physical proximity. Most landmarks are identified as independent buildings located on a discrete parcel whose public significance is the building itself. Unlike the listed theaters that have long been viewed as having an impact on the theater district as a whole, landmark structures are not often associated -- in a manner significant for land use purposes -- with an area much broader than the landmark lot and adjacent properties. In contrast, the underlying land use nexus associated with the wider transfer is not an individual theater that may seek to transfer its air rights, but rather the concentration of theaters within the Theater Subdistrict and the 30-year recognition of the benefits the theaters and the theater industry have had in the Theater

Subdistrict. In addition, as noted above, the Commission has supported wider transfers from landmarks such as Grand Central Subdistrict and South Street Seaport District, when it found that specific landmarks had broader land use effects on an area.

The Commission is assured that the proposed wider transfer would not undermine existing landmarks law. The Commission notes that the wider transfer is applicable to Broadway theaters by virtue of their "listed" and not their landmark status. In addition, while transfer of development rights typically are used to preserve landmarks, listed theaters have already been granted flexible zoning provisions under existing Theater Subdistrict regulations. Moreover, unlike landmark transfers, which preserve the building structure, theater air rights transfers are intended to promote the preservation of theater use as well as the structure. The Commission is aware that the Department has worked closely with the Landmarks Preservation Commission staff to ensure that designated landmarks and planning principles are not compromised.

The Commission notes that under the proposal, landmarked theaters could continue to utilize the landmarks transfer mechanism and its provisions, including "unlimited" transfer in high density districts, and waivers of bulk controls. The Theater Subdistrict, aside from over 30 landmark theaters, also includes approximately twelve non-theater landmarks in and immediately adjacent to the district. However, the Commission notes that most of the non-theater landmarks have either transferred their developments through as-of-right zoning lot mergers of other zoning provisions, or have no and or little development rights to transfer. Four non-theater landmarks have an appreciable amount of development rights, three of which have potential receiving sites under existing provisions. While the Commission recognizes that a few of these landmarks may be at some disadvantage in competing with the wider transfer mechanism, it notes that the additional transfer of theater development rights by special permit may not be used if a landmarks transfer to the development site is available. In this way, the landmarks special permit would be given preference should developments seek more floor area than is permissible under as-of-right provisions. Furthermore, the Commission notes that most of the listed theaters with development rights (22 of 24) are landmarked, and that the preservation obligations associated with the transfer mechanism have been strengthened to address the long-term preservation and maintenance of landmark features within the theaters. The Commission believes that more landmarks would be preserved in the Theater District as a result of the proposal.

### **As-of-Right Transfer versus Special Permit**

Considerable testimony was heard regarding the "as-of-right" nature of the transfers and how this undermines community review and the integrity of the zoning resolution. The Commission considered carefully this testimony, but firmly believes that the transfer by a non-discretionary certification process is essential to the success of the proposal and that it is necessary in order to best achieve theater preservation goals. The Commission arrived at this conclusion based on several factors.

First, the transfers are part of a carefully crafted plan that would produce predictable results on receiving sites. In general, the transfer to any particular site would be modest and limited to a 20 percent increase over the base FAR, and in the case of Eighth Avenue to a potential development of 14.4 FAR. Additional development rights may be transferred to high density zones by special permit. The 20 percent FAR increase is typical of other as-of-right bonuses in the Zoning Resolution. This amount would be easily accommodated on receiving sites within the theater subdistrict. Moreover, the scale and form of development would be predictable, well within the development framework of Midtown's allowable density and would be subject to all Midtown provisions to ensure such predictability. These would include height and setback regulations, pedestrian circulation, subway stair relocation and off-street loading requirements, and retail and street wall continuity on designated streets. Under Midtown regulations, most development has been as-of-right, complying with all mandatory district elements. It has successfully produced buildings that are consistent with the scale and character of the CBD.

As a result of the proposal and the use of the wider transfer, the high density avenues would be able to achieve 18.0 FAR from a base of 15.0, while midblocks would be able to achieve from 12.0 FAR and 14.4 FAR from a base FAR of 10.0 and 12.0 FAR. The bow-tie sites along Broadway and Seventh Avenue within the Core (43rd street to 50th street) would be able to achieve 16.8 FAR from the base FAR of 14.0. The Commission believes that from a neighborhood character and urban design perspective, these densities would be consistent with the scale and character of the existing buildings in the Theater Subdistrict. For typical sites, the transfers would result in buildings that are approximately six stories higher than what could be achieved under existing provisions. Moreover, the transfers do not add new floor area to the district, but redistribute existing floor area, primarily from the midblocks to the avenue sites.

The existing context of Theater Subdistrict consists primarily of 15.0 to 18.0 FAR as-of-right buildings and 18.0 to 21.6 FAR special permit buildings. Prior to the 1982 zoning several major developments that characterize Sixth Avenue were developed at 18.0 FAR with an as-of-right Plaza Bonus. In addition, larger developments of 18.0 to 21.6 FAR were constructed (mostly on Broadway -- Paramount Plaza, One Astor Place and the Marriott Marquis) using the Theater Bonus. The next wave of development took place between 1982 and 1988 under the sunset provisions at higher underlying base FAR's -- 18.0 FAR on Broadway and Seventh Avenue, Sixth Avenue and 42nd Street, and 15.0 FAR in the midblocks between Sixth Avenue, and Seventh Avenue and Broadway. Developments built under the sunset provision at approximately 18.0 FAR predominated the bow-tie sites (Bertelsmann Building, Morgan Stanley, and Embassy Suites hotel) and Broadway and Seventh Avenue, north of the Core (Crown Plaza, 750 Broadway the Equitable Building). Midblock buildings were constructed at approximately 15.0 FAR.

The Commission is convinced that the proposed densities with the wider transfer of 14.4 FAR in the midblocks, 16.8 within the Core, and 18.0 FAR on Sixth and Seventh avenues, Broadway and 42nd Street are well within the range of existing buildings' size, scale and form that characterize the district. Moreover, within the Core, almost all major developments along Seventh avenue and Broadway are generally between 18.0 and 21.6 FAR. In comparison, the resultant 16.8 FAR under the proposal within the Core would in fact be less than the existing context. In the case of Eighth Avenue, in conjunction with the new urban design controls, developments under the proposal would be more compatible and sympathetic to the surrounding context than what the existing zoning regulations permit (a detailed discussion appears later in the report).

Second, transfers by certification will assure that the transfers are usable and not subject to a long and uncertain discretionary review process. While the Commission supports special permit reviews in many situations, it does not believe they are necessary or appropriate in this instance. With a strong market, development is likely to occur under existing regulations without discretionary review. The transfers, which allow a redistribution of existing development rights in a controlled manner, will not result in additional sites being developed and in general, would limit the increased floor area on any particular site to a 20 percent increase. As noted above, the Commission believes the resulting developments are predictable in scale and form. The Commission also notes that the existing Theater Retention Bonus is by certification. One of the

major reasons that it has not been used is that the 1 FAR Bonus is not a sufficient incentive for a theater owner to enter into a preservation obligation in perpetuity. The Commission also notes that other bonuses in the Zoning Resolution, such as the Inclusionary Housing bonus and the Plaza bonus, do not require discretionary review.

The Commission has considered the testimony by community boards and elected officials and the Manhattan Borough President voicing concerns regarding the role of the community in major land use applications, and that by creating an as-of-right process, the action circumvents any public input. The Commission is sympathetic to the needs of the community and believes that the public should be aware of major developments that take place in the community.

Consequently, the Commission is modifying the proposal to change the Chairman certification to a City Planning Commission certification with a referral to affected community boards, the Borough President and local elected officials. As such, in addition to referral to the Landmarks Preservation Commission and the Theater Subdistrict Council, the applications for transfer of development rights would also be referred for a 30-day period to community boards and elected officials. This would allow for full disclosure of the application and drafts of all related documents indicating compliance with the conditions while remaining non discretionary.

The Commission believes that the additional 20 percent transfer by special permit is appropriate. The special permit would be applicable in the 14.0 and 15.0 FAR zones (avenues and wide streets) where additional density would still be consistent with the existing context. The special permit transfer would provide additional contributions to the Theater Subdistrict fund, and over the long term may result in the preservation of a greater number of theaters.

The Commission notes Community Board 5's concern's regarding the potential effects of utilizing a combination of proposed and existing bonuses and transfers. However, the Commission is assured that the proposal would not allow the combination of bonuses to pile up to produce unpredictable and oversized buildings. The proposal sets maximum FAR caps in all districts -- under the proposal, the combination of mechanisms including the as-of-right and special permit transfers and the proposed theater incentive (and excluding the landmarks transfer) would not exceed 21.6 under any circumstance. The Commission believes that such levels of density are consistent with Midtown's scale and character. Furthermore, as the additional density would be

granted by special permit, it would be evaluated on a case by case basis with an environmental review.

**PROPOSED AMENDMENTS TO USE COVENANT**

The Commission believes that the proposed wider transfer in conjunction with amendments to the existing use covenant will ensure the long-term preservation and maintenance of Broadway theaters. The Commission understands that the existing use covenant, which was adopted in 1982, has only been used five times. However, it has been effective in those instances -- two of which are small drama houses -- in keeping the theaters available for continuing theatrical use while several other theaters have been converted.

The existing use covenant requires that several conditions be met including a signed lease or written commitment from a theater operator/owner for occupancy of the theater and its operation as a legitimate theater for a period of five years; a legal commitment binding upon the owner and lessee of the theater for continuance of its use as a legitimate theater for the life of the related development; and a plan and program for inspection and continuing maintenance to ensure the theaters availability for legitimate theater use. The Commission notes that these conditions would impose an obligation to use the theater for legitimate theater use.

Furthermore, the Commission believes that the proposed amendments would strengthen the existing provisions by clearly identifying the obligations, and ensuring a level of predictability that the existing use covenant does not achieve.

The proposed amendments would strengthen the obligations by requiring a report certifying to the physical and operational soundness of the theater. In the event that the theater is not physically or operationally sound, the plan and program would be required to upgrade the theater to a level standard of physical and operational soundness. There would also be a plan and program for its continuing maintenance and periodic inspection.

The Commission also notes that the amendments strengthen obligations for landmark theaters. If a theater is landmarked, then the conditions report required for certification must certify to the condition of the landmark features. If the landmark features are not in "good physical repair and sound proper condition", then a plan would be required to preserve and maintain these

features along with other building elements to ensure its continued availability for legitimate theater use. In this case, the licensed architect must have a background in historic preservation, which must have credentials acceptable to the Landmarks Preservation Commission.

The Commission believes that these changes would greatly improve the quality of preservation of the theaters. Recognizing that most of the theaters are landmarked, the Commission believes that landmark features of the Broadway theaters would be preserved along with its use over the long term under the amended provisions. In addition, the conditions require that contributions be made to the Theater Subdistrict fund, and that a portion thereof be set aside for inspection. The Theater Subdistrict fund would provide an additional level of inspection expertise, and oversight to ensure the long term integrity of the structures.

However, the Commission is concerned with several aspects of the amended use covenant which it believes would compromise the objectives of the Department's proposal. The use covenant includes two provisions which would allow modifications to the obligations to retain the theater for legitimate theater use.

The first provision is a special permit which would allow theater owners after a period of 25 years to request a modification or discontinuance of the use covenant. The Commission understands that the purpose of this special permit is to provide a mechanism to respond to unforeseen circumstances far into the future. The Commission believes, in light of the substantial benefits conferred on the theater owner through the wider transfer, that this provision is contrary to the goals of the proposal including preserving all theaters for legitimate theater use over the life of the related development. The Commission believes that this special permit should be eliminated and it therefore modifies the proposal to remove the special permit.

The second provision includes an authorization for the temporary use of the theater for a period of one year (renewal to three years) if the theater has been substantially dark over a five year period. The temporary use would be required to have a theatrical component. In addition, no major structural changes would be allowed that would compromise the continued availability of the theater for legitimate theater use purposes. The Commission believes that the authorization is unnecessary and, similar to the special permit, would undermine the intent of the proposal.

While sympathetic to the concerns of the theater owners and recognizing the cyclical nature of the Broadway theater industry, the Commission believes the use covenant in tandem with the Theater Subdistrict Councils goals to support Broadway theater, increase productivity, straight plays and audience development, would assist in ensuring that theaters remain lit and are active venues. The Commission believes that it is incumbent on the theater owner to continue to make the theaters available for theater use at any time. For these reasons, the Commission believes that the authorization provision should be eliminated. The Commission therefore modifies the text to remove the authorization.

A third issue relates to the time period for inspection and monitoring of the conditions of the theater. The proposed regulation requires that once every ten years, the theater must be inspected to ensure its condition and maintenance. The existing provisions requires a three year period for inspection. While the Commission agrees with the Department that once every three years may be unnecessary, it believes that a ten year period is inappropriate. Consequently, it is modifying the proposal to require an inspection and report every five years, which it understands is consistent with the Landmark Preservation Commission's current requirements for landmark inspections.

#### **THEATER SUBDISTRICT COUNCIL AND THEATER SUBDISTRICT FUND**

In addition to the theater use covenant and related obligations, the Commission believes that one of the significant benefits of the proposal is the creation of the Theater Subdistrict Council and the Theater Subdistrict Fund. The Commission recognizes that for the first time all key players of the Broadway Industry have come together in an collaborative effort to address long-standing issues confronting the industry. At a time when Broadway theaters face fierce competition, the coalescing of the theater owners and producers, the unions and guilds, the writers and directors and other artists and technicians, is an important step in strengthening the Broadway industry and furthering legitimate theater. This coalition, known as the "Broadway Initiative," would play an important role in furthering the objectives of the Theater Subdistrict. Furthermore, the creation of Theater Subdistrict fund and the Theater owners' contribution would act as a catalyst in advancing the goals of the Broadway Initiative.

The Commission notes that one of the theater owners' obligation for the wider transfer would be to contribute to the "Theater Subdistrict Fund". The fund would be administered and governed by the "Theater Subdistrict Council", a non-profit organization (to be designated by the Mayor) comprised of the theater community, related professionals and public officials. The Theater Subdistrict Council would administer the funds to further preserve, strengthen and enhance the Theater Subdistrict. Furthermore, at least 20 percent of the amount contributed to the fund would be used for monitoring and enforcing land use obligations associated with the transfers. The contribution amount would be \$10 per square foot of development rights transferred to a receiving site. The flat fee is based on 20 percent of the average sales of property in the Theater Subdistrict. The flat fee could be adjusted periodically to reflect changes in the assessed value of land in the district.

While several speakers at the public hearing questioned the rationale behind the flat fee of \$10 per square-foot contribution instead of a percentage figure, the Commission believes that the flat fee contribution is appropriate. It would be difficult to determine the actual value of individual transactions for the sale of air rights. The Commission notes that the fee is based on 20 percent of the average sales in the district at this time and could be adjusted periodically by the Chair of the City Planning Commission based on changes in assessed values within the Theater Subdistrict no more than once every three years. However, the Commission believes that the adjustment should be made by the Commission, and that it is important that a review of the fee be mandatory and occur at least every three to five years, again based on changes in assessed values in the area. Accordingly, the Commission is modifying the application to reflect these changes.

The Commission believes that the role of the Theater Subdistrict Council is important to the preservation of Broadway Theater and the Theater Subdistrict. The Commission is aware that the Broadway Initiative is intended to be designated as the Theater Subdistrict Council. The Commission heard a significant amount of testimony in support of the Broadway Initiative from a wide cross-section of the commercial theater industry as well as non-profit and off-Broadway groups. The Commission believes that the goals of the Initiative, including fostering new creativity, galvanizing production, developing new audiences, and encouraging investment, are laudable and important for the industry. In addition, the Initiative's mandate for production financing, audience development and facilities oversight would complement the Department's

goals to preserve Broadway theater. The Commission believes the Initiative's role along with the zoning incentives to preserve legitimate Broadway theater will help foster the long-term health of the industry and the preservation of theaters for legitimate theater use. Furthermore, the Commission heard testimony from the representatives of the theater industry including non-profit, Off Broadway and off-Off Broadway theaters, and unions and guilds, that the goals of the Broadway Initiative and the health of the Broadway theaters would benefit not only Broadway, but also off-Broadway and off-Off Broadway theaters.

During the public hearing, several speakers raised issues regarding the success or failure of the Initiative, their funding sources, contingency plans in the event that the Initiative fails, oversight and a conflict of interest in the Initiative taking the role of monitoring the Theater owners' obligations.

While the Commission understands these concerns, it believes that the Initiative has significant progress towards establishing a functional and effective non-profit organization. It notes the broad cross-section of the theater industry -- both for-profit and not-for-profit theaters testified in support of the proposal and the Broadway Initiative. Because the Initiative's operating budget is not dependent on the contribution to the Theater Subdistrict fund, the group will be seeking additional sources of funding to accomplish its mission. However, the contribution is a critical element in furthering the efforts of the Initiative. The Commission also notes that while the planned scope of the Broadway Initiative's activities exceeds that which could be financed through the development rights contributions, the contributions fully cover the land use obligations of the Broadway Initiative while allowing for the funding of meaningful theater enhancement activities, including the theater inspections called for in the proposed zoning text.

The Commission is aware that the proposal also includes oversight by the City including, annual reports to the Department of City Planning indicating the use of the funds and the nature of the activities that the fund is used for. Furthermore, the City has powers vested to de-designate the group and designate another non-profit organization. The Commission believes that the City would ensure that funds generated from the transfer of development rights would be used appropriately and responsibly within the district. In order to further improve oversight, the Commission is modifying the application to require the submission of annual reports to the City

Planning Commission as well as to the Department.

Concerns were raised at the public hearing regarding the potential conflict of interest in the Initiative (which includes the theater owners) monitoring the theater owners' obligation. The Commission believes that the Initiative would be an effective monitor. The Commission notes that the role would supplement, and not in anyway replace the City's role in enforcing obligations. The Commission also notes that a third party interest has been tried and tested in landmark preservation applications, through the Landmarks Conservancy, also a non-profit organization. The Commission believes that the proposed arrangement would greatly increase the level of monitoring and enforcement of preservation obligations.

In response to various comments and suggestions regarding the composition and goals of the Broadway Initiative, the Manhattan Borough President suggested that the Theater Subdistrict Council include community boards, the Borough President and elected officials and that the goals of the Theater Subdistrict be elaborated. These changes would also increase the level of predictability and oversight of the Theater Subdistrict Council. The Commission concurs with the Borough President's recommendations and has modified the proposed text amendment to reflect these changes. The modified text would require that the goals of the Council be to enhance the long-term viability of Broadway by facilitating plays and musicals, encouraging new audiences, and monitoring certain preservation and use covenants in listed theaters. The Commission also modifies the text to require Community Board, Borough President, and Speaker of the City Council representation on the Board of the Theater Subdistrict Council. The Commission also notes that the Borough President urges the theater owners to invest the equity received from the transfer of development rights in the preservation of the existing theaters and the creation of new theaters.

#### **ZONING CONTROLS FOR EIGHTH AVENUE**

The Commission believes that the proposed rezoning of both sides of Eighth Avenue would achieve an enhanced streetscape and building form without undermining the essential dual nature of the corridor -- as both the western edge to the Theater Subdistrict and as the transition to the Preservation Area of the Special Clinton District. Eighth Avenue is governed by two sets of zoning controls. The east side of the avenue is within the Theater Subdistrict and the Special

Midtown District, while the west side of the avenue is within the Perimeter Area of the Special Clinton District. While both sides of the avenue are zoned C6-4, use and bulk regulations differ on both sides. Moreover, the avenue lacks any regulations to ensure a visually and physically attractive streetscape or any controls that would ensure that development taking place is responsive to and supportive of the existing land use, scale and character of the neighboring areas, particularly the Preservation area of the Special Clinton District to the west and the Theater Subdistrict Core to the east. The Commission believes that it is important to finally address this long-standing land use issue.

The proposal would extend the Theater Subdistrict and the Special Midtown District boundaries to 150 feet west of Eighth Avenue, overlapping the Perimeter area of the Special Clinton District. The proposal would also establish both sides of Eighth Avenue as the "Eighth Avenue Corridor", a subdistrict within the Theater Subdistrict with a common set of use, density and bulk (including height and setback) regulations. It would allow listed theaters to transfer available development rights to sites on the west side of Eighth Avenue. Under the proposal, receiving sites on both sides of Eighth Avenue could increase their FAR from 10.0 to 14.4 through the transfers, or in combination with other bonuses. The proposal also establishes use and special height and setback controls for both sides to create a coherent urban context along the avenue and an appropriate transition to the Clinton Preservation Area and the Theater Subdistrict Core.

The proposal would designate both sides of Eighth Avenue as a Retail and Street Wall Continuity Street (similar to other major avenues and crosstown streets in Midtown) which would ensure that ground floor frontage be reserved for retail, personal services and amusement uses, and that minimum street walls are established on the Avenue. Similar to Broadway and Seventh Avenue in the Core, Eighth Avenue would have an additional layer of urban design controls especially for the west side of Eighth Avenue.

#### **Extension of Midtown and the Theater Subdistrict**

The Commission believes that there is a sound planning and land use rationale for extending the Special Midtown District and Theater Subdistrict boundaries to the west side of Eighth Avenue to overlap the Perimeter Area of the Special Clinton District. The Commission believes that the west side of Eighth Avenue is inextricably linked to the Theater District. The existing land uses,

scale and character along the west side serve both the Theater Subdistrict, as evidenced by the location of the Martin Beck theater, Restaurant Row, World Wide Plaza and Ramada Inn, and the Clinton residential community. Furthermore, Eighth Avenue forms one of the major access points to the Theater District and is the spine connecting 42nd Street to Columbus Circle and Lincoln Square. The inclusion of the west side within the Theater Subdistrict coupled with new urban design and other controls would assist in creating an appropriate context for both sides of the street and support theater preservation goals without undermining the Special Clinton District.

The Commission notes that the expansion would not repeal the existing Special Clinton District Perimeter Area. Instead the boundary would simply overlap the existing district. The overlap would extend 150 feet west of Eighth Avenue and would coincide with the underlying C6-4 zoning district and Perimeter Area boundary. Existing Special Clinton District protections and provisions would remain in place. The Commission believes that this treatment is a sound solution to address a long standing issue. The Commission also notes that previous Commissions had expressed similar methods of addressing Eighth Avenue's unique location. The Commission believes that the extension of the boundary and the creation of the Eighth Avenue Corridor subdistrict would assist in establishing a comprehensive framework for the orderly growth and development of Eighth Avenue. Furthermore, the extension of Midtown would also extend to the west side of Eighth Avenue important Midtown urban design requirements, including retail and street wall continuity, pedestrian circulation requirements and subway stair relocation requirements.

The extension of the Theater Subdistrict would also allow the proposed listing of the Martin Beck, a traditional Broadway landmarked theater located on the west side of Eighth Avenue on West 45th Street. The listing of the theater and its inclusion within the Theater Subdistrict, would allow it to be eligible for all subdistrict-wide theater preservation incentives. The Commission believes that the applicability of these provisions to the Martin Beck would encourage its long term preservation.

Community Board 4 and Clinton residents expressed concern that the overlap of the Midtown District would undermine the Special Clinton District. Of particular concern was proposed

language within the text which gives priority to the Special Midtown District Regulations over the Special Clinton District regulations in case of conflict or discrepancy between the two sets of controls. The Commission understands the Community Boards' concerns and believes that such language should be eliminated from the proposed text. This would ensure that the Midtown regulations would supplement, and not supersede the Clinton regulations. The Commission modifies the text to eliminate this language. Thus, where there are conflicts between the Special Clinton District and Special Midtown regulations, the more restrictive regulations would apply.

The Manhattan Borough President, the Times Square BID, MAS and others recommended that the west side of Eighth Avenue, north of 45th Street be eliminated from the proposal. The Commission is unconvinced by the rationale of eliminating the west side, north of 45th Street. The Commission believes that, while 45th Street is identified by the location of the Martin Beck theater, it is not the presence of the theater alone that justifies the inclusion of the west side within the Theater Subdistrict. Existing land uses and activities on Eighth Avenue are strongly related and linked to the Theater Subdistrict. While north of 50th Street, Eighth Avenue is more residential, the presence of restaurants and hotels suggest that this area too serves the Theater Subdistrict. The Commission also believes that including the west side supports district- and city-wide goals.

#### **Eighth Avenue as a Receiving Area for Development Rights**

The Commission notes that the extension of the Theater Subdistrict would allow the west side of Eighth Avenue to be a receiving zone for available development rights under the proposed wider transfer mechanism. After careful review, the Commission finds the capacity to absorb a portion of the theater development rights on the west side of Eighth Avenue is an essential element of the proposal. It also believes that the west side of Eighth Avenue is an appropriate area for transfer given its proximity to listed theaters, its many linkages to the Theater Subdistrict, and its scale and land use character. With development already taking place on Eighth Avenue, there is an opportunity for such development to support theater preservation goals. In addition, in conjunction with the proposed urban design controls for the avenue, development would be more compatible and harmonious with the existing neighborhood context. The Commission further notes that the wider transfer would be restricted to the Perimeter Area, and would in no way intrude on the Preservation Area.

The Commission heard testimony in opposition to the zoning for the west side of the avenue. The major concerns involved the effect of 14.4 FAR on the scale and character of the area, its possible scale of development compared to the low-scale Preservation Area to the west, and the effect of the proposal on the use of the Inclusionary Housing bonus. Current regulations cap the maximum permissible FAR on the west side at 12.0 through the as-of-right Inclusionary Housing bonus. The proposal allows both sides of the avenue to receive up to 14.4 FAR through the wider transfer mechanism, or a combination of the wider transfer with other existing bonuses including the Inclusionary Housing bonus. In effect, the transfer would increase the development potential on the west side by 20 percent.

The Commission believes that the treatment of the west side must be viewed comprehensively, and that the proposed allowable FAR's are appropriate within the context of theater preservation, the proposed land use and urban design controls, and its unique location between Clinton and Midtown. The Commission notes that the Special Clinton District, which was adopted in 1974, created the Perimeter area along both Eighth Avenue and 42nd Street as areas for growth and development within the district. Zoning approvals since then have supported this concept. This included the approval of World Wide Plaza on the west side of the avenue between 49th and 50th street (occupying the entire block) which located a large office building on Eighth Avenue. Similarly, the two blocks along 42nd Street were rezoned from low-scale manufacturing districts to high density (10.0 bonusable to 12.0) FAR to facilitate high-rise residential development. Most recently, the rezoning of block 1090 along 42nd Street between Eleventh and Twelfth avenues from a 2.0 FAR district to a 10.0 FAR district, was approved with Community Board 4's support. The Commission believes that Department's proposal for the west side of Eighth Avenue is consistent with other zoning actions in the area.

The Commission believes that the proposed 14.4 FAR, coupled with the proposed urban design controls, would result in development that would be more compatible with the existing scale and character of the area and existing low-scale context of the neighboring midblocks, than developments that could occur under existing provisions. Current controls do not require street walls and have no minimum tower controls. Furthermore, there are no controls that would guide the location of towers and define its relation to the Clinton Preservation area. The number of stories of a typical 12.0 FAR development allowable today would range between 25- and 35-

stories. The most recent construction on the avenue includes two residential buildings with towers above a one-story base. In the case of residential buildings with smaller floor plates (21 percent tower coverage), buildings could rise over 50 stories.

The Commission believes that the new design controls, which include a minimum street wall of 50 feet on the avenue as well as on the side streets, and tower coverage controls which require the tower floor plate to be a minimum of 33 percent of the lot area, would effectively reduce the height of the buildings while ensuring a better transition to the west. Developments under the proposal at 14.4 FAR would range between three to six stories taller than what could be built today assuming the same percent tower coverage. Moreover, the proposal would prohibit development of buildings up to 55 stories. Consequently, the Commission believes the new design controls allow the additional density to be accommodated without impacting the scale and character of the area. Instead, the design controls along with retail continuity requirements and pedestrian circulation requirements, would greatly improve the streetscape and pedestrian environment.

Community Board 4 expressed concern that the applicability of the proposed wider transfer and Midtown bonuses to the west side would compete with the Inclusionary Housing bonus. The Commission recognizes that affordable housing within Clinton is one of the district's primary goals.

The Commission believes that the City should make every effort to facilitate low-income housing within the district. The Commission recognizes that the Inclusionary Housing bonus has never been used on Eighth Avenue. Moreover, the Commission notes that if the Inclusionary Housing bonus were used on Eighth Avenue, it would produce about 85 low-income units. The Commission notes that new low-and mixed- income housing units in Clinton are being pursued through the Department of Housing Preservation and Development (HPD). The Commission also notes that the residential development between West 49th and 50th streets is being financed under a 80/20 program, and would provide approximately 100 low-income units within the development. The Commission understands that HPD is in the process of exploring with the community different options for the Clinton Urban Renewal Area where city-owned sites are concentrated. Finally, the Commission is pleased by the City's commitment to provide funds

through HPD for affordable housing in Clinton as certifications for 14.4 FAR developments on Eighth Avenue are granted. The Commission concurs with the City's conclusion that substantial benefits that will occur as a result of the Theater Subdistrict proposal justify additional affordable housing investment in the area.

The Commission concurs with the Community Board regarding the Subway Improvement bonus which would be applicable to a handful of sites on the west side. The Commission believes that the proposal should be modified to eliminate the Subway Improvement bonus on the west side. While the Community Board also recommended eliminating the Theater Rehabilitation bonus, the Commission believes it is appropriate to retain the bonus on the west side. The bonus would apply to one site, adjacent to the Martin Beck theater. If the bonus is used, it would result in the rehabilitation and long-term preservation of the Martin Beck. Furthermore, the applicability of the bonus to the theater would be consistent with the intent of its listing. The Commission modifies the proposal to eliminate the Subway Improvement bonus on the west side of Eighth Avenue.

The Community Boards also expressed concerns regarding the potential displacement of tenants and businesses as a result of new development on Eighth Avenue. While the Commission understands these concerns, it believes that potential displacement would not result from the proposal. The Commission recognizes Eighth Avenue is developing and will continue to develop regardless of the proposal. Contrary to what some speakers expressed at the public hearing, the proposed rezoning will not induce, facilitate or accelerate development on the avenue. Instead, it would encourage development taking place to be supportive of theater preservation.

Moreover, the Commission notes that the Special Clinton District regulations include some of the most restrictive set of controls and tenant protections applicable anywhere in Manhattan. The Preservation Area, immediately west of the Eighth Avenue Perimeter Area, is the centerpiece of the District. It restricts development by lowering the permissible FAR to 4.2 FAR and in height to 66 feet in the midblocks to preserve the scale and character along the side streets. The Special District includes stringent anti-harassment regulations and restrictions on demolition of buildings with residential units. These regulations discourage tenant evictions and demolition of existing buildings, providing tenant protections that are not available elsewhere in

the City. The Commission notes that the anti-harassment and restrictions on demolition of buildings regulations also apply within the Perimeter Area and they would continue to apply under the proposal. While unrelated to the proposal, the Commission shares general concern about tenant harassment and urges the City to work with the Community Board and elected officials to address these issues.

### **Urban Design Issues**

The Commission believes that the proposed design controls would significantly improve the neighborhood character and streetscape along Eighth Avenue. The Commission believes that the controls are sensitive and well thought out, and successfully respond to the unique physical character of the two special districts.

For the first time, both sides of Eighth Avenue would have common and consistent use and bulk controls, defining and establishing a unified urban context for the avenue. The Commission is pleased that both sides of Eighth Avenue will benefit from being a retail continuity street. New ground floor retail and service uses that would be a requirement for new developments, would enhance the character of the area, provide for a more lively and safe pedestrian environment, and provide uses that could serve both neighborhoods.

The proposed bulk controls have been carefully crafted to respond to the existing scale and character of Eighth Avenue, the Clinton Preservation area and the Theater Subdistrict Core including the presence of existing theaters. The Commission also notes that the design controls are flexible enough to accommodate different building types and were supported by, both the Real Estate Board of New York and the American Institute of Architects.

The Commission believes the street wall requirements, including the permitted variation in street walls, are appropriate within the existing context. The Commission is particularly pleased with the side street requirements which lower the maximum street wall to 85 feet and increase the setback to ensure visual continuity along side streets. The street wall restrictions for developments adjacent to theaters strengthens the controls to ensure that new developments are more harmonious with landmark theaters. The Commission is aware that similar controls have been implemented elsewhere in the city and have been successful. The side street urban design

controls that apply to the bow-tie sites, are similar in nature. The Commission notes that the bow-tie controls were successful in creating east-west vistas towards Times Square and creating an appropriate relationship between new developments and listed theaters.

The Commission also strongly advocates the special controls for the west side of Eighth Avenue to ensure an appropriate transition to the Clinton Preservation Area. These controls include lowering the maximum street wall beyond 100 feet from Eighth Avenue to 66 feet. In addition, there would be an overall height limit of 66 feet, extending the Preservation controls further east. Furthermore, the west side would be governed by tower coverage controls -- 33 to 40 percent -- which would effectively control the height of the building. The proposal also allows towers above 40 percent lot coverage to have the option of the Midtown height and setback regulations. The controls would effectively shift the bulk away from the midblock and towards the avenue.

Community Board 4 raised concerns regarding the option of Midtown height and setback regulations on the west side contending that such regulations encourage office development by allowing higher lot coverage buildings. While the potential for new office development is limited due to the maximum lot size of 30,000 square feet on the west side, the Commission concurs with the Community Board and believes that this option should be eliminated on the west side. The removal of the Midtown height and setback would make the west side of Eighth Avenue more consistent with other residential Avenue controls including C6-4X, and Lincoln Square zoning controls. The elimination of the Midtown height and setback would discourage office development by limiting floor plate sizes on higher floors. Therefore the Commission modifies the proposal to eliminate the Midtown height and setback option on the west side.

Several speakers also expressed concern that the proposal would encourage commercial development on the west side, given the avenue depth of 150 feet, the proposed FAR of 14.4 and the minimum base requirements. However, the Commission believes that the existing depth of 150 feet would not facilitate inappropriate commercial development. Unlike sites on the east side, which may merge with parcels in the midblock to assemble a large enough site for commercial development, sites on the west side are limited by the Preservation Area. On a 30,000 square foot lot (entire block front to the full 150 foot depth), because of existing design controls beyond 100 feet (street wall and height limits) as well as the side street setbacks,

developments would not be able to accommodate a reasonable floor plate for significant office developments. Furthermore, the Commission's modification to remove the Midtown height and setback, would further limit the tower above 85 feet to 12,000 square feet floor plates (40 percent tower). Typically office floor plates are a minimum 20,000 square feet. As such, it is unlikely that office buildings would be developed under the proposed controls west of Eighth Avenue.

The Commission recognizes that developments on the west side at 14.4 FAR would result in mixed use buildings, with retail and other uses in the base of the building. The Commission feels that such uses would not conflict with the scale and character of the avenue. Furthermore, the Commission notes that several residential areas have minimum base requirements. Several buildings have been constructed on the Upper East and Upper West Side where residential units have been accommodated within the base of the buildings.

At the public hearing, the Times Square BID recommended that the minimum street wall on the both sides of Eighth Avenue be increased from 50 to 85 feet, which would be more consistent with the Midtown street wall continuity range of 85 to 150 feet. The Commission, however believes that the wide street wall range is more consistent with the existing character of the avenue. Currently, Eighth Avenue has a mix of street wall heights. Several buildings have street walls that range between 85 to 150 feet. However, more than 50 percent of the buildings (including buildings on development sites that would be retained) are less than 85 feet. The buildings include towers on one-story bases, and several four- to eight- story tenements and pre-war residential buildings. In light of the existing context, the wider range of street walls will produce buildings that would relate to the existing family of buildings on the avenue. The Commission also believes that the impact of the street wall is most appreciated at the street level, and as such the range would continue the mix of building types, consistent with the avenue being a transition from a high density commercial district to a lower scale residential area.

At the public hearing, a land use attorney representing a property owner on the west side of Eighth Avenue testified that the new urban design controls on the narrow street beyond 100 feet from Eighth Avenue would create a hardship and make full build out of their property infeasible, and suggested that the new controls should only apply to development sites that have frontage on Eighth Avenue. The Commission appreciates the property owner's concerns, however, it believes

that the intent of the urban design controls should not be compromised on the basis of a unique condition in the rezoning area. The urban design controls, particularly the 66-foot height limit between 125 and 150 feet from Eighth Avenue, ensures a harmonious transition from the high density on the avenue and the low-scale of the Preservation area. It precludes residential towers from locating immediately adjacent to the low-rise tenements and row houses in the midblocks, and that this objective should not be undermined.

#### **ENVIRONMENTAL ISSUES**

The Commission heard testimony regarding the Environmental Assessment Statement and its conclusion that the proposal would not result in any adverse impacts in the area and the surrounding neighborhoods. Several speakers questioned why an Environmental Impact Statement (EIS) had not been prepared and why the potential impacts of the full build out had not been evaluated in a Generic EIS. Speakers including both community boards, were concerned with the potential impacts of the proposal on traffic and pedestrian circulation, density and shadows, infrastructure and services, and displacement pressures on the Clinton community.

The Commission notes that the EAS prepared for the proposal analyzed potential environmental effects using conservative assumptions and notes that the EAS concluded that the proposal would not result in significant adverse effects. The EAS projected reasonable worst case development that could result from the proposed action and compared it to development that could occur under existing zoning controls based on reasonable projections of growth within the foreseeable future using conservative standard methodologies.

The Commission notes that the EAS concluded that development patterns in the Theater Subdistrict area would be fundamentally the same with or without the proposed action. The proposal would not change the underlying zoning districts in the area and would not increase the base FAR for any area affected by the text change. While the proposed action would change permitted densities in some locations through the transfer of development rights from listed theaters, the differences would not be great enough to result in an increase in the total amount of new residential and commercial development or to alter area-wide development patterns other than the possibility of having somewhat larger buildings on fewer sites. In addition, the transfer would be accompanied by a corresponding reduction in the amount of air rights available to a

site occupied by a listed theater. As indicated in the EAS, the proposed action would have three principal effects on new development. One, because the proposal would encourage the preservation of listed theaters in the Theater Subdistrict, it is possible that additional theaters would be preserved. Two, the proposed contextual bulk controls for Eighth Avenue would ensure that new development there would be compatible with that of the surrounding area. Three, greater density would be permitted on certain sites within the project area through the transfer of development rights from listed theaters, including sites along the Eighth Avenue Corridor. This last effect could allow projected demand for residential and commercial development to be accommodated on fewer sites.

The Commission notes that based on these reasonable assumptions and the potential effects on development the EAS evaluated the effects of the proposal, including site specific impacts from increased density and potential effect on traffic, air quality, and shadows. The EAS found no impacts in comparison with development that could take place under existing provisions and as such a negative declaration was properly issued. The Commission believes the EAS presents a thorough analysis and was well within the framework of environmental review.

The Commission notes that a full build-out of all of the 23 potential development sites was not assessed because it is not expected that all of the sites will be developed within the foreseeable future. It is often the case that zoning capacity greatly exceeds demand for new development in an area. In addition, the Commission notes that a GEIS was not prepared because the EAS concluded that the proposal does not have the potential to result in significant adverse impacts. Moreover, an EIS is not needed when an EAS concludes that impacts are unlikely.

Several speakers were concerned with potential impacts of larger developments, particularly in the Core, where there is significant pedestrian and traffic congestion. The Commission notes that Times Square and the Theater Subdistrict area is one of the most well served and accessible areas in New York. Fifteen subway lines converge in the district, with 26 entrances which serve the area. There are also 11 bus lines that traverse the district. In addition, one of the major regional terminals -- the Port Authority Bus Terminal -- is adjacent at the southwest corner of the Theater Subdistrict. The Commission believes that this is an area that can support future growth and development.

The Commission notes that, while the Theater District accounts for only 17 percent of the total population of Midtown Central Business District, the area is congested. Pedestrian congestion has increased, particularly along the bow-tie, where the irregular geometry creates unique circulation issues. However, recent studies have shown that highest levels of pedestrian traffic take place on Wednesdays in the afternoon and during the weekend. Furthermore, much of the congestion is related to the greater influx of tourists and theater goers in the district. In this context, any additional density on a particular sites as a result of this action would be allocated to other uses having different traffic and pedestrian peaks. The factors that generate pedestrian traffic are related less to the amount of floor area, but more to the uses that are provided. The proposed rezoning, in this regard would not alter existing patterns of retail and ground floor uses.

The Commission believes that current traffic and pedestrian congestion needs to be studied separate and apart from the rezoning proposal. The Commission is aware that several initiatives are underway to address these issues. The Commission notes that the Department's Transportation Division is conducting a study of vehicular and pedestrian traffic issues in the Theater Subdistrict. The study which is funded under the Federal CMAQ projects, is being conducted as a joint study with the Department of Transportation and the Police Department. The study intends to propose a series of short and long term measures to improve safety for pedestrians and vehicles. The Department's work program also includes implementation of the recommendations during the subsequent phases of funding. The Commission also notes that the Times Square BID is exploring ways to improve midblock connections as a means to create alternative pedestrian circulation patterns in the area. In addition, the Citiscape Institute is studying certain streets within the Theater Subdistrict and other parts of Midtown.

#### **NEW THEATER BONUS**

The Commission believes that the proposed provision to allow additional floor area for developments that provide new theaters is appropriate. The Commission believes that the incentive could produce additional theaters which would further strengthen and enhance the Theater Subdistrict.

The Commission notes that when the Special Theater District was first established, a bonus provision was available for the construction of new theaters incorporated within new

developments. Under this provision, five new theaters were constructed which are active today. However, at that time, several theaters were demolished to facilitate the new theaters, Subsequently, the City adopted a policy to protect existing theaters as venues by listing 44 Broadway theaters. In 1987, the bonus was eliminated, given that no new theater was constructed for over a decade.

Currently with changes to the theater industry and recent entertainment trends, there is a market demand for larger, 2000-seat theaters. However, despite this demand, no new theater has been constructed in the district except for the two theaters (the rehabilitation of the New Amsterdam and the Ford theater within the 42nd Street Development) with significant amount of public subsidies. The Commission recognizes that theaters still remain less economic to build as compared to other more profitable uses. In addition, as the Theater Subdistrict area undergoes redevelopment, adequately-sized sites that could accommodate new theaters are disappearing. The Commission believes that the proposed theater incentive would encourage and facilitate the construction of a new theater within the district. Unlike the previous bonus which granted significant amount of bonused floor area and produced large developments, the proposed incentive would tie the additional floor area only to the amount of space occupied by the theater.

The proposed theater incentive would be available in only the higher density zoning districts -- 14.0 and 15.0 FAR zones within the area. This would limit the bonus to the most appropriate areas within the district including Seventh Avenue and Broadway, Sixth Avenue and 42nd Street. The incentive would require a special permit. The additional floor area granted would be restricted to the floor space occupied by the new theater and its essential functions. Furthermore, it would be limited to 2.0 FAR on the site and any development would be capped at 21.6 FAR.

The Commission recognizes that the spatial and structural configuration of the theater may have special requirements. Therefore, the Commission believes that the special permit provisions allowing waivers to street wall and set back requirements within the Core, are appropriate and justified. The Commission notes that requests for waivers would be evaluated under the special permit to ensure that the impacts as a result of the spatial and programmatic needs are minimized. In addition, the waiver would be granted as long as the intent of the Times Square lighting and signage requirements are not compromised in any way. The Commission believes

that these findings would safeguard against any adverse impacts on neighborhood character and scale. However, the Commission believes that the proposal should be modified to include an additional finding to ensure that a new theater has easy access and visibility from the street. The Commission therefore modifies the proposal to include an additional finding and believes that this modification would strengthen the Theater incentive.

The Commission heard concerns that the creation of new theaters would compete with the existing theaters and their active use. In discussion and after hearing testimony, the Commission concludes that the creation of new theaters is not in conflict with the preservation of existing theaters. A new theater, if constructed, would most likely satisfy a different market audience for large musicals, attract more theater goers while the smaller theaters would remain available for straight plays and small musical performances. The Commission is confident that new and old theaters would coexist and add to the vitality of the Theater Subdistrict.

#### **THEATER WAITING SPACE**

The Commission believes that the proposal to include a new category of pedestrian circulation space, "theater waiting space" is consistent with the goals and purposes of the Subdistrict. All new developments within the district that exceed 60,000 square feet area are required to provide pedestrian circulation space at the ground level. They may satisfy this requirement by providing one or more different types of pedestrian circulation space which include sidewalk widening, building entrance recess, corner circulation space, through block connections, arcades and corner arcades. The proposed amendment would allow theater waiting space as one of the options that would satisfy the pedestrian circulation space requirement.

The purpose of the theater waiting space is to create a gathering area off the sidewalk and adjacent to a theater. Existing listed theaters have limited lobby space -- typically theater goers linger on the sidewalks in front of the theaters before the show and during intermission. The provision of this space would alleviate some of the gathering on the street to provide more circulation space on the side walks. The theater waiting space would be required to have direct access to either the theater or to uses that front the space. This would ensure that the space would be active and used.

Community Board 5 raised concerns that the provision of theater waiting space may take away much needed circulation space elsewhere within the development. The Commission, however believes that the standards for the space will address pedestrian circulation within the broader context of the Theater Subdistrict than the individual development. The Commission notes that the proposed space is an option and would be applicable only in certain developments that are adjacent to listed theaters. The Commission believes that additional category, if used, will benefit the Theater Subdistrict over all without compromising the intent of the provision.

#### **ELIMINATION OF CERTAIN BONUSES**

The Commission notes that the proposal will eliminate two existing as-of-right bonuses in the Theater Subdistrict -- the Theater Retention bonus and the Through Block Galleria Bonus.

The Commission believes that eliminating the Theater Retention bonus is appropriate. It recognizes that the City adopted the bonus in order to create theater preservation mechanism that would have broader applicability to all listed theaters regardless of their location adjacent to development parcels. The 1.0 FAR bonus for retaining a listed theater for legitimate theater use applied to sites anywhere within the district except the Theater Subdistrict Core. The Theater Retention bonus has never been used.

The Commission believes that the proposed transfer mechanism would be a much more effective preservation mechanism. Unlike the Theater Retention bonus, the proposed transfer would shift and redistribute floor area from the listed theaters to development sites within the district. The Theater Retention bonus, if used, would increase the overall development potential within the district by creating new floor area. Theaters that were bonused could continue to sell the available development rights to adjacent parcels. In light of the fact that the Commission feels strongly about approving the proposed wider transfer mechanism, the Theater Retention bonus would be rendered obsolete. The Commission, therefore believes that its elimination is warranted.

The Commission also believes that eliminating the through block galleria bonus is appropriate. The through block galleria mechanism, a 1.0 FAR as-of-right bonus, was created in 1982 with the adoption of the Special Midtown District and is applicable only within the Theater

Subdistrict, outside the Core. The objective of the bonus was to encourage the continuation of the existing pedestrian circulation and through block network within the long blocks of the Theater Subdistrict. The text included upgraded locational and design standards as compared to those for other through block spaces.

Three developments have utilized the 1.0 FAR bonus -- the Equitable Tower West between 51st and 52nd streets; East-West Tower between 52nd and 53rd streets; and NY Hilton Expansion/Minskoff development between 53rd and 54th streets, all between Sixth and Seventh avenues. Each development has been successful in adding to the continuation of the pedestrian circulation network.

Recognizing that existing through block gallerias have been effective, the Commission was initially concerned with the elimination of the bonus and the potential loss of much needed pedestrian circulation space. However, after reviewing existing conditions and limitations of the zoning, the Commission believes that there are several reasons for eliminating the bonus -- most significant being its very limited applicability and its competition with other as-of-right incentives which would provide greater public benefit. The Commission understands that the through block connection option for pedestrian circulation space would remain in place.

The Commission notes that, in addition to three through block gallerias, several through block connections have also been built to meet the pedestrian circulation requirement. The existing provisions have been effective in that they have resulted in the growth of the pedestrian network and passageways within the Theater Subdistrict. However, since the bonus continues to have locational restrictions -- it is not permitted in the core or within 200 feet of an avenue or Broadway, and are limited to through-block sites, with the exception of the 42nd Street site between Sixth and Seventh Avenue, there are practically no potential sites which would qualify for a through block galleria bonus.

The 42nd Street site could potentially create a through block galleria. However, there are no through block passageways on the block to the north, and only a private through block passageway on the block to the south. Thus, the absence of the galleria on this site would not necessarily disrupt an existing north-south midblock connection. Furthermore, a through block

connection could still be provided as pedestrian circulation space. Finally, the elimination of the through block galleria would facilitate the usage of the proposed TDR mechanism which would result in the upgrade of a theater and contribution to the Theater fund.

The Commission understands that the Department intends to take a comprehensive look at plazas and other public spaces. The Commission urges the Department to study pedestrian circulation space requirements in Midtown, a part of the initiative, including the size, design and locational standards of such spaces and requirements.

#### **USE GROUP T AMENDMENTS**

The Commission believes that the proposal to remove a 40-foot frontage restriction on Use Group T ground floor uses within the Theater Subdistrict Core, is appropriate. Use Group T regulations, which apply to developments within an area generally bounded by 40th to 51st Streets and Sixth to Eighth Avenues, require that ground floor uses be restricted to those uses listed in Use Group T and maintain a frontage of 10 to 40 feet, with theaters as the exception. The intent of the zoning was to ensure a mix of uses that would be compatible and enhance the Theater Subdistrict. While understanding the intent of the zoning, the Commission however feels that the 40-foot restriction may be too restrictive in an area which is attracting new street level and pedestrian oriented uses. The Commission believes that removing the restrictions would provide more flexibility regarding the configuration of uses on the ground floor and as such, the removal of the restriction would not undermine the scale and character of the area. Furthermore, the Commission notes that ground floor uses would continue to be limited to uses from Use Group T.

#### **CLARIFICATION REGARDING THE CONFIGURATION OF BULK ON RECEIVING SITES**

The Commission understands that the text amendments include a provision for sites that receive development rights from a listed theater to transfer bulk across district boundaries by certification, similar to the existing provision that allows the shift of bulk on sites with listed theaters. The conditions for both cases include a use covenant for the subject theater. However, the text is ambiguous when a receiving site also includes a listed theaters. The Commission believes that the text should be modified to ensure that in such cases, the conditions for allowing the transfer of bulk across district boundaries should require that the theater on the receiving site

to be covenanted. The Commission, therefore modifies the text accordingly.

#### **ADDITIONAL AMENDMENTS TO THE THEATER SUBDISTRICT**

The Commission believes that several additional amendments that are proposed as a part of the text amendment, are appropriate. These amendments are consistent with the goals and purpose of the Subdistrict. These changes would strengthen and improve existing provisions, clarify or reorganize existing provisions or provide more flexibility to the provision.

#### **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows;

Matter Underlined or in **Greytone** is new text, to be added;  
 Matter in ~~Strikeout~~ is old text, to be deleted;  
 Matter within # # is defined in Sections 12-10 or 81-01  
 . . . indicates unchanged text omitted within a paragraph;  
 \* \* \* indicates unchanged text appearing in the Zoning Resolution.

ARTICLE III  
 COMMERCIAL DISTRICT REGULATIONS

\* \* \*

Chapter 7  
 Special Regulations

\* \* \*

37-03  
 Off-Street Relocation or Renovation of a Subway Stair

~~37-031~~  
 Applicability of this Section

Where a #development# or #enlargement# is constructed on a #zoning lot# of ~~at least~~ 5,000 square feet or more of #lot area# that fronts on a portion of a sidewalk containing a stairway entrance or entrances into a subway station located within the #Special Midtown District# as listed in Section 81-46 and those stations listed in this Section the following table, the existing entrance or entrances shall be relocated from the #street# onto the #zoning lot#. The new entrance or entrances shall be provided in accordance with the provisions of this Section. ~~These provisions are in accordance with the New York City Transit Authority's "Station Planning Guidelines" (Revised, 1975, and as may be subsequently revised).~~

A relocated or renovated subway stair may be counted as pedestrian circulation space in accordance with the provisions of Section 37-07 (Requirements for Pedestrian Circulation Space).

Station	Line	District
Wall St-Bway	IRT (Lexington Ave)	<del>C5-5CR</del>
Fulton St-Bway	IRT (Lexington Ave)	<del>C5-5CR</del>
Brooklyn Bridge	IRT (Lexington Ave)	C6-4
8th St	BMT (Bway)	C6-4
23rd St	BMT (Bway)	C5-2
23rd St	IRT (Lexington Ave)	<del>C5-2</del>
28th St	IRT (Lexington Ave)	<del>C5-2</del>
33rd St	IRT (Lexington Ave)	<del>C5-3</del>
34th St	IND (8th Ave)	C6-4

59th St	IRT (Lexington Ave)	C5-2
South Ferry	IRT (Bway-7th Ave)	C5-5CR
Cortlandt St	IRT (Bway-7th Ave)	C5-3
Wall Street	IRT (Bway-7th Ave)	C5-5
Fulton St	IRT (Bway-7th Ave)	C5-5CR
Park Place	IRT (Bway-7th Ave)	C5-5CR
Broad St	BMT (Nassau)	C5-5
Fulton St	BMT (Nassau)	C6-4
Chambers St	BMT (Nassau)	C6-4
Whitehall St	BMT (Bway)	C5-5CR
Cortlandt St	BMT (Bway)	C5-5
City Hall	BMT (Bway)	C5-5CR
Lexington Ave ( <u>60th St</u> )	BMT (Bway)	C6-4
Bway-Nassau	IND (8th Ave)	C5-5CR
Chambers St	IND (8th Ave)	C6-4 C5-3CR
<del>50th Street</del>	<del>IND (8th Ave)</del>	<del>C6-4</del>

37-03237-031

Standards for location, design and hours of public accessibility

In addition to the standards set forth in the current station planning guidelines as issued by New York City Transit Authority's "Station Planning Guidelines" (Revised, 1975, and as may be subsequently revised), the following standards shall also apply:

(a) Location

The relocated or renovated entrance shall be immediately adjacent to, and accessible without any obstruction from a public sidewalk, ~~or from within a space accessible to the public, as those spaces are defined in the applicable zoning district regulations~~ an #urban open space# or pedestrian circulation space as defined in Section 37-07 (Requirements for Pedestrian Circulation Space). Any such #urban open space# or pedestrian circulation space shall have a minimum horizontal dimension equal to the width of the relocated stairs or the minimum width of the pedestrian circulation space, whichever is greater.

(b) The relocated or renovated entrance may be provided within a #building#, but shall not be enclosed by any doors. The area occupied by a relocated or renovated entrance within a #building# shall not be counted towards the #floor area# of the #enlargement# or #development#.

(e) Design standards

The relocated or renovated entrance shall have a stair width of at least eight feet for each run.

~~(c) The relocated entrance shall have a queuing space at the top and bottom of the stairs at least eight feet wide and 15 feet long, and such queuing space may overlap a #sidewalk widening#, an #arcade#, a #plaza#, a #residential plaza# or an #urban plaza#.~~

(d) Where two or more existing stairway entrances are being relocated or renovated as part of the same #development# or #enlargement#, the new entrance or entrances shall have a total stair ~~width or widths~~ equal to or greater than the sum of the stair widths of those existing stairway entrances ~~being relocated~~, but in any no case may any stair be ~~no~~ less than eight feet in width.

The relocated entrance may be relocated within an #urban plaza#, provided that the minimum width of each stair is ten feet and the queuing area of the relocated entrance is unobstructed and contiguous to a sidewalk or a #sidewalk widening#. A relocated entrance within an #urban plaza# is a permitted obstruction, but shall not be subject to the percentage limit on permitted obstructions for an #urban plaza#.

(e) For a relocated entrance only, the entrance shall have a queuing space at the top and bottom of the stairs that is at least eight feet wide and 15 feet long. Such queuing space may overlap with an #urban plaza# or an #arcade# in accordance with the provisions of Sections 27-60 (ARCADES) or 37-073 (Design standards for pedestrian circulation spaces).

No stairway shall have more than 14 risers without a landing, and each landing shall have a minimum width equal to the width of the stairs, and a minimum length of five feet.

Throughout the entire stairway entrance, including passageways, the minimum clear, unobstructed height shall be at least 7 feet, 6 inches from finished floor to finished ceiling, including all lighting fixtures and #signs#.

(e) The entire entrance area, including passageways, shall be free of obstructions of any kind, except for projecting information signage.

~~(f) The relocated entrance may be relocated within a #plaza#, a #residential plaza# or an #urban plaza# provided that the queuing area of the relocated entrance is unobstructed and contiguous to a sidewalk or a #sidewalk widening#. A relocated entrance with a #plaza#, a #residential plaza# or an #urban plaza# is permitted obstruction, but shall not be subject to the percentage limit on permitted obstructions for a #plaza#, a #residential plaza# or an #urban plaza#.~~

(g) The relocated entrance shall connect to an existing or proposed subway passageway, or shall connect, via an underground passageway, to a mezzanine area of the subway station.

(h) The below-grade portion of a relocated entrance may be constructed within the #street#.

(c) Hours of public accessibility

- (i) The relocated or renovated entrance shall be accessible to the public during the hours when the connected mezzanine area is open to the public or as otherwise approved by the New York City Transit Authority.

37-03337-032

Administrative procedure for a subway stair relocation or renovation

- (a) For any #development# or #enlargement# that is subject to the requirements for the relocation of a subway stair entrance or counts a renovated or reconstructed subway stair as pedestrian circulation space in accordance with the provisions of Section 37-07 (Requirements for Pedestrian Circulation Space), Except as otherwise provided in paragraph (b) of this Section, no plan shall be approved by the Department of Buildings and no excavation permit or building permit shall be issued for any #development# or #enlargement# that is subject to the requirements for the relocation of a subway stair entrance, unless the following criteria are met:
  - (1a) for a relocated entrance, sSuch plan includes a stair relocation plan and the related documents that bind the developer to:
    - (i1) construct the new stair entrance in accordance with such plan;
    - (ii2) demolish above-ground elements of the existing entrance; ~~and~~
    - (iii3) seal the existing entrance at the sidewalk level; and
    - (4) maintain the work performed on the relocated or renovated entrance; or
  - (2b) for a renovated or reconstructed entrance, such plan includes a renovation or reconstruction plan and related documents that bind the developer to:
    - (1) renovate or reconstruct the entrance in accordance with such plan; and
    - (2) maintain the work performed on the renovated or reconstructed entrance; and
  - (2c) Ssuch plan and related documents bear the New York City Transit Authority's approval; and
  - (3d) Ssuch plan is accompanied by a certified copy of an agreement, as recorded between the New York City Transit Authority and the owner for an easement on the #zoning lot# for subway-related use of the new stair entrance and for public access via such entrance to the subway station, which agreement has been recorded against the #zoning lot# in the Office of the Register of the City of New York (County of New York) and is accompanied by the Register's receipt of recordation; and
  - (4) ~~Such plan is accompanied by any request for modification of special urban design guidelines pursuant to Section 37-034.~~

- (b) ~~In the event that major construction problems render the stair relocation infeasible or that operating design considerations make it undesirable, the Transit Authority and the City Planning Commission, by joint certification, may release the developer from said requirement. In such event, the stair relocation requirement shall be satisfied by retention of the existing stair and provision on the #zoning lot# of an open area which accommodates pedestrian traffic passing the existing entrance. Such space shall have a width equal to at least one and one half times the width of the existing stair entrance and shall extend along the full length of the stair entrance.~~
- (ee) no permanent certificate of occupancy shall be issued for any #development# or #enlargement# subject to the subway stair relocation requirement or counting a renovated or reconstructed subway stair as pedestrian circulation space in accordance with the provisions of Section 37-07, unless and until all of the work required under paragraphs (a) or (b) of this Section has been completed and New York City Transit has so certified in writing to the Department of Buildings. Prior to obtaining a permanent certificate of occupancy, the relocated subway stair must be 100 percent complete in accordance with the approved plans and such completion shall have been certified by the Transit Authority.

~~37-034~~ 37-033

~~Modification of special urban design guidelines and urban open space requirements for a relocated or renovated subway stair~~

~~The City Planning Commission may, by certification to the Commissioner of Buildings, allow modifications of the requirements of Section 37-01 (Special Urban Design Guidelines — Streetscape), Section 37-02 (Applicability of Article II, Chapter 7, to Residential Plazas and Arcades), and the applicable provisions of #urban open space# in Section 12-10 (DEFINITIONS), if it finds that the relocated subway stair cannot be accommodated without modification to these provisions.~~

Sections 37-01 (Special Urban Design Guidelines — Streetscape), 37-02 (Applicability of Article II, Chapter 7, to Residential Plazas and Arcades), 37-031 (Standards for location, design and hours of public accessibility) and 37-04 (Requirements for Open Air Concourses, Sidewalk Widening and Urban Plazas) may be modified if the Chairperson of the City Planning Commission certifies to the Commissioner of Buildings that a relocated subway stair cannot be accommodated in any reasonable way without modification of these provisions.

\* \* \*

~~37-035~~ 37-034

~~Waiver of requirements~~

~~Upon application the City Planning Commission may authorize a waiver of requirements of Section 37-03 if the Commission finds that:~~

- (a) ~~the total #floor area# of all #developments# or #enlargements# after November 8, 1984, is less than 70,000 square feet; or~~

- (b) ~~there are major structural problems in creating space for a relocated stairway entrance in the existing #building#; or~~
- (c) ~~the space in an existing #building# which is required to relocate the stairway entrance is occupied by a tenant on a lease which was in effect prior to March 1, 1984, to which a member of the Bar of the State of New York shall attest, and that there is no opportunity to relocate the tenant within the #enlargement#.~~

As a condition for granting such waiver the Commission shall determine that:

- (1) ~~in the case of paragraph (a), the City Planning Commission and the Transit Authority may require an easement to accommodate the future relocation of the subway stairway in accordance with the New York City Transit Authority's "Station Planning Guidelines" (Revised, 1975, and as may be subsequently revised);~~
- (2) ~~in the case of paragraphs (a) or (b), no construction is undertaken that would preclude the future relocation of a stairway entrance from the sidewalk to the #zoning lot#;~~
- (3) ~~in the case of paragraph (c), that at the expiration of the existing lease the applicant shall undertake the relocation of the stairway entrance according to the provisions of this Section.~~

The provisions of Section 37-03 (Off-Street Relocation or Renovation of a Subway Stair) may be waived by joint certification of New York City Transit and the Chairperson of the City Planning Commission that major construction problems or operating design considerations render the stair relocation infeasible. In such event, the stair relocation requirement may be satisfied by retention of the existing stair and the provision on the #zoning lot# of an open area, qualifying under the provisions of Section 37-07 (Requirements for Pedestrian Circulation Space), that accommodates pedestrian traffic passing the existing stair entrance.

\* \* \*

37-07  
Requirements for Pedestrian Circulation Space

All pedestrian circulation space required pursuant to the provisions of any special purpose district shall comply with the provisions of this Section, as such may be modified by the terms of the special district.

37-071  
Amount of pedestrian circulation space

The minimum amount of pedestrian circulation space to be provided for #developments# or #enlargements# shall be determined by the following table:

MINIMUM PEDESTRIAN CIRCULATION SPACE REQUIREMENTS

<u>Size of #zoning lot#</u>	<u>Required #floor area#</u>
<u>5,000 to 20,000 square feet</u>	<u>1 square foot per 350 square feet of new #floor area#</u>
<u>Above 20,000 square feet</u>	<u>1 square foot per 300 square feet of new #floor area#</u>

37-072

Types of pedestrian circulation space

The pedestrian circulation space provided shall be of one or more of the following types: an arcade, building entrance recess area, corner arcade, corner circulation space, relocation or renovation of a subway stair, sidewalk widening, subway station improvement, through #block# connection or #urban plaza#.

Each #zoning lot# shall be categorized as either a #corner lot#, #through lot# or #interior lot#, and pedestrian circulation space shall be provided on each #zoning lot# in at least one of the applicable types, or combinations of types, specified in the following table:

PROVISION OF PEDESTRIAN CIRCULATION SPACE ON CERTAIN TYPES OF LOTS

<u>Type of Pedestrian Circulation Space</u>	<u>#Corner lot#</u>	<u>#Through lot#</u>	<u>#Interior lot#</u>
<u>Arcade</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Building entrance recess area</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Corner arcade</u>	<u>X</u>		
<u>Corner circulation space</u>	<u>X</u>		
<u>Relocation or renovation of</u>			
<u>subway stair</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Sidewalk widening</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Subway station improvement</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Through #block# connection</u>	<u>X</u>	<u>X</u>	
<u>#Urban plaza#</u>	<u>X</u>	<u>X</u>	<u>X</u>

Minimum design standards for each type of pedestrian circulation space and, where applicable, the maximum amount of each type of pedestrian circulation space that may be counted toward meeting the requirements of Section 37-071 (Amount of pedestrian circulation space) are set forth in Section 37-073 (Design standards for pedestrian circulation spaces).

37-073

Design standards for pedestrian circulation spaces

(a) Arcade

Arcades shall not be subject to the provisions of Sections 12-10 (DEFINITIONS) and 27-60 (ARCADES). In lieu thereof, the provisions of this Section shall apply.

An arcade is a continuous covered space that adjoins and extends along a #front lot line#, is at the same elevation as the adjoining sidewalk, is open for its entire length to the sidewalk except for columns and is accessible to the public at all times. An arcade shall be provided on the #wide street# frontage of a #zoning lot# of a new #development# or #enlargement# where the #zoning lot# lies directly adjacent to an existing arcade on a #wide street#, except where an existing #building# without an arcade extends along a portion of the #wide street front lot line# of the #zoning lot# containing the new #development# or #enlargement#. Where an arcade abuts another arcade, there shall be a clear, unobstructed passage between both arcades.

An arcade shall meet the following requirements:

(1) Dimensions

An arcade with columns shall have a minimum clear width of 10 feet, exclusive of all columns, and a maximum width of 15 feet, inclusive of columns. No column width shall be greater than five feet. Columns shall be spaced along the #street# with a minimum clear width between columns of 15 feet. An arcade shall have a clear height of not less than 12 feet and not more than 30 feet.

(i) On an #interior lot# or a #through lot# fronting on a #narrow street#, an arcade without columns is permitted only if:

(a) it has a continuous, unobstructed minimum length of 100 feet or, with the exception of the width of driveways for the required loading berths located at the #side lot line# of the #zoning lot#, is unobstructed for the full length of the new #building# frontage, whichever is greater; and

(b) the entire #front lot line# shall be unobstructed for the same depth of the arcade, except for that portion of the #front lot line# occupied by an existing #building#.

(ii) On an #interior lot# or a #through lot# fronting on a #narrow street#, an arcade with columns is permitted only if it connects directly to an existing arcade on an adjacent #zoning lot#, matching it in width and alignment, and has a continuous, unobstructed minimum length beyond the existing adjacent arcade of at least 100 feet or, with the exception of the width of driveways for the required loading berths located at the #side lot line# of the #zoning lot#, is unobstructed for the full length of the new #building# frontage, whichever is greater.

- (iii) On a #corner lot# fronting on a #narrow street#, an arcade is permitted only if it extends for the full length of the #street# frontage, with the exception of a driveway for a required loading berth located at the #side lot line# of the #zoning lot#, or if the arcade provides unobstructed pedestrian flow along such entire frontage in combination with one or more of the following other spaces with which it connects at one or both ends: a corner arcade, a #plaza#, an off-street rail mass transit access improvement, an intersecting sidewalk widening, an intersecting #street#, a relocated or renovated subway entrance, a through #block# connection, a through #block# galleria or an #urban plaza#.
- (iv) On a #wide street#, an arcade shall be permitted, provided that:
  - (a) the arcade extends along the full length of the #street line# between intersecting #streets#; or
  - (b) in the case of a #building# that occupies less than the entire #street# frontage between intersecting #streets#, on a full blockfront #zoning lot#, unobstructed pedestrian flow along the entire frontage is provided on the #zoning lot# by the arcade in combination with one or more of the following #open spaces# with which the arcade connects at one or both ends: a corner circulation space, a #plaza#, an intersecting sidewalk widening or an #urban plaza#; or
  - (c) in the case of a #building# whose #zoning lot# occupies less than the entire #street# frontage between intersecting #streets#, the arcade connects with an existing arcade of matching width and alignment, a #plaza# or an #urban plaza# on an adjacent #zoning lot#, so that unobstructed pedestrian flow along the entire blockfront is provided by the arcade in combination with such existing spaces.

(2) Full blockfront arcade

When a #zoning lot# occupies a full blockfront, both ends of the arcade on that #street# frontage shall be open and accessible directly from the sidewalk of the intersecting #street# or any other qualifying pedestrian circulation space.

(3) Permitted obstructions

Except for building columns, an arcade shall be free from obstructions of any kind.

(4) Specific prohibitions

No vehicular driveways, except as permitted under paragraph (a)(1) (Dimensions) of this Section, parking spaces, passenger drop-offs, loading berths or trash storage facilities are permitted within an arcade, nor shall such facilities be permitted immediately adjacent to an arcade.

(5) Illumination

All existing and new arcades shall maintain a minimum level of illumination of not less than five horizontal foot candles between sunset and sunrise.

(b) Building entrance recess area

A building entrance recess area is a space that adjoins and is open to a sidewalk or sidewalk widening for its entire length and provides unobstructed access to the building's lobby entrance or to the entrance to a ground floor #use#.

A building entrance recess area shall meet the following requirements:

(1) Dimensions

A building entrance recess area shall have a minimum length of 15 feet and a maximum length of 50 feet measured parallel to the #street line# at a building's lobby entrance and a maximum length of 30 feet parallel to the #street line# at a ground floor #use# entrance. It shall have a maximum depth of 15 feet measured from the #street line# and shall have a minimum depth of 10 feet measured from the #street line#.

(2) Permitted obstructions

Any portion of a building entrance recess area under an overhanging portion of the #building# shall have a minimum clear height of 15 feet. It shall be free of obstructions except for building columns, between any two of which there shall be a clear space of at least 15 feet measured parallel to the #street line#. Between a building column and a wall of the #building#, there shall be a clear path at least five feet in width.

(3) Permitted overlap

A building entrance recess area may overlap with an arcade, a corner arcade, a corner circulation space or a sidewalk widening, and may adjoin or overlap and connect directly without obstruction to another building entrance recess area except that, on any one #street# frontage, each lobby or ground floor #use# shall connect to only one building entrance recess area.

(c) Corner arcade

A corner arcade shall not be subject to the provisions of Sections 12-10 (DEFINITIONS) and 27-60 (ARCADES). In lieu thereof, a corner arcade shall be a small covered space adjoining

the intersection of two #streets# at the same elevation as the adjoining sidewalk or sidewalk widening and directly accessible to the public at all times.

A corner arcade shall meet the following requirements:

(1) Dimensions

- (i) a corner arcade shall have a minimum area of 200 square feet, a minimum depth of 15 feet measured along a line bisecting the angle of intersecting #street lines#, and shall extend along both #street lines# for at least 15 feet but not more than 40 feet from the intersection of the two #street lines#; and
- (ii) the height of a corner arcade shall be not less than 12 feet and a clear path at least 12 feet wide shall be provided from one #street line# to another #street line#.

(2) Permitted obstructions

Except for building columns, a corner arcade shall be free from obstructions of any kind.

(3) Specific prohibitions

The specific prohibitions pertaining to an arcade as described in paragraph (a)(4) of this Section shall also be applicable to a corner arcade.

(4) Permitted overlap

A corner arcade may overlap with an arcade; however, the area of overlap may only be counted once toward the fulfillment of the required minimum area of pedestrian circulation space.

(d) Corner circulation space

A corner circulation space is a small #open space# on the #zoning lot# of a #development# or #enlargement#, adjoining the intersection of two #streets#, at the same elevation as the adjoining sidewalk or sidewalk widening and directly accessible to the public at all times.

A corner circulation space shall meet the following requirements:

(1) Dimensions

A corner circulation space shall have the same minimum dimensions as a corner arcade, as described in paragraph (c)(1) of this Section.

(2) Permitted obstructions

A corner circulation space shall be completely open to the sky from its lowest level, except for temporary elements of weather protection, such as awnings or canopies, provided that the total area of such elements does not exceed 20 percent of the area of the corner circulation space and that such elements and any attachments thereto are at least eight feet above #curb level#. A corner circulation space shall be clear of all other obstructions including, without limitation, door swings, building columns, #street# trees, planters, vehicle storage, parking or trash storage. No gratings, except for drainage, shall be permitted.

(3) Building entrances

Entrances to ground level #uses# are permitted from a corner circulation space.

An entrance to a building lobby is permitted from a corner circulation space, provided that the entrance is at no point within 20 feet of the intersection of the two #street lines# that bound the corner circulation space.

(4) Permitted overlap

A corner circulation space may overlap with a sidewalk widening.

(e) Relocation or renovation of a subway stair

When a #development# or #enlargement# is constructed on a #zoning lot# containing a relocated stairway entrance or entrances to a subway, or an existing stairway entrance or entrances to a subway, and such entrance or entrances are relocated or renovated in accordance with the provisions of Section 37-03 (Off-Street Relocation or Renovation of a Subway Stair), one and a half times the area, measured at #street# level, of such entrance or entrances may count toward meeting the pedestrian circulation space requirement.

(f) Sidewalk widening

Sidewalk widenings provided to meet the requirements for pedestrian circulation space shall not be subject to the provisions of Sections 12-10 (DEFINITIONS), including the definition for #urban plaza#, and 37-04 (Requirements for Open Air Concourses, Sidewalk Widenings and Urban Plazas). In lieu thereof, the provisions of this Section shall apply.

A sidewalk widening is a continuous paved open area along the #front lot line# of a #zoning lot# at the same elevation as the adjoining sidewalk and directly accessible to the public at all times. A sidewalk widening shall be provided on the #wide street# frontage of a #zoning lot# of a new #development# or #enlargement# where all existing #buildings# on the same #block# frontage, whether on the same or another #zoning lot#, provide sidewalk widenings.

A sidewalk widening shall meet the following requirements:

(1) Dimensions

A sidewalk widening shall have a width of no less than five feet nor more than 10 feet measured perpendicular to the #street line#, and shall be contiguous along its entire length to a sidewalk.

A sidewalk widening shall extend along the full length of the #front lot line# except for the portion of the #front lot line# interrupted by an existing #building# which is located at a #side lot line# or, in the case of a full #block# frontage, located at the intersection of two #streets#.

A required sidewalk widening on a #wide street# shall connect directly to any existing adjoining sidewalk widening and shall extend the entire length of the new #front lot line#.

The width of such a required sidewalk widening shall equal that of the existing adjoining sidewalk widening. If there is more than one such existing sidewalk widening, the width of such a required sidewalk widening shall equal that of the existing sidewalk widening that is longest.

A sidewalk widening is permitted on a #wide street# when not adjacent to an existing sidewalk widening only if either the sidewalk widening extends along the #street line# of the #wide street# for the full length of the block front, or the #zoning lot# is a #corner lot# and the sidewalk widening extends along the full length of the #street line# of the #wide street# to its intersection with the #street line# of the other #street# on which the #zoning lot# fronts.

Except for the permitted interruptions, as set forth in paragraph (f)(2) of this Section, a sidewalk widening is permitted on a #narrow street# only if it has a length of at least 100 feet.

(2) Permitted interruptions

Interruptions of the continuity of a qualifying sidewalk widening shall be permitted only under the following conditions:

(i) by an arcade that has a width equal to or greater than the width of the sidewalk widening and which is directly connected to the sidewalk widening;

- (ii) if overlapped by a corner circulation space or a building entrance recess area that permits uninterrupted pedestrian flow;
- (iii) if overlapped by an #urban plaza#, provided that the overlapping portion of such #urban plaza# conforms to the design standard of a sidewalk widening;
- (iv) by an off-street subway entrance, provided such an entrance is located at a #side lot line# or is located at the intersection of two #street lines#;
- (v) if overlapped by the queuing space of a relocated or renovated subway entrance, provided that the queuing space for the entrance leaves at least a five foot uninterrupted width of sidewalk widening along the entire length of the queuing space; or
- (vi) by a driveway that is located at a #side lot line#; however, where the #zoning lot# has a through #block# connection, a through #block# galleria or a through #block urban plaza# at such a #side lot line#, the location of its driveway is not restricted. The area occupied by the driveway, up to the width of the sidewalk widening, may be counted toward meeting the pedestrian circulation space requirement, provided that there shall be no change of grade within the area of the sidewalk widening.

(3) Permitted obstructions

A sidewalk widening shall be unobstructed from its lowest level to the sky except for those obstructions permitted under paragraph (f)(2) of this Section and for temporary elements of weather protection, such as awnings or canopies, provided that the total area of such elements, measured on the plan, does not exceed 20 percent of the sidewalk widening area, and that such elements and any attachments thereto are at least eight feet above #curb level#.

(4) Specific prohibitions

No #street# trees are permitted on a sidewalk widening. No vehicle storage, parking or storage of trash is permitted on a sidewalk widening. Gratings may not occupy more than 50 percent of the sidewalk widening area nor be wider than one half the width of the sidewalk widening.

(5) Special design treatment

When one end of the sidewalk widening abuts an existing #building# on the #zoning lot# or an existing #building# on the #side lot line# of the adjacent #zoning lot#, design treatment of the termination of the sidewalk widening is required to smooth pedestrian flow. The portion of the sidewalk widening subject to design treatment, hereinafter

called the transition area, shall not extend more than 10 feet nor less than five feet along the sidewalk widening from its termination.

The transition area shall receive special design treatment which may include, but is not limited to, landscaping, sculpture or building transparency. The transition area shall be designed to effect a gradual change of the sidewalk widening width to match the #street wall# line of the existing #building# at the sidewalk widening's termination. This may be accomplished by a curved or diagonal edge of paving along a landscaped bed, the use of stepped edges of the #building# or other architectural treatment of the #building# or paving which avoids an abrupt visual termination of the sidewalk widening. Such special design treatment may be considered a permitted obstruction.

(g) Subway station improvement

For #developments# or #enlargements# that are granted a special permit pursuant to Section 74-634 (Subway station improvements in commercial zones of 10 FAR and above in Manhattan), no more than 3,000 square feet may count toward meeting the pedestrian circulation space requirement.

(h) Through #block# connection

A through #block# connection is a paved open or enclosed space providing unobstructed access to the building's main lobby and connecting, in a straight, continuous, unobstructed path, two parallel or nearly parallel #streets#.

Up to a maximum of 3,000 square feet of a through #block# connection may count toward the minimum pedestrian circulation space requirement.

A through #block# connection shall meet the following requirements:

(1) Location

(i) A through #block# connection shall be located at least 150 feet from the intersection of two #streets#.

(ii) Where the #zoning lot# or a portion thereof is directly across a #street# from, and opposite to, an existing through #block# connection on an adjacent #block# and the existing connection is at least 150 feet from the intersection of two #streets#, the alignment of the new through #block# connection shall overlap with that of the existing connection. Such existing connection may also be a through #block# galleria, through #block urban plaza# or any through #block# circulation area with a minimum width of 12 feet, which is located within a #building#.

(iii) Where there are already two through #block# connections located on the same #block#, a new through #block# connection shall not count toward meeting the pedestrian circulation space requirement.

(iv) No through #block# connection shall be permitted on any portion of a #zoning lot# occupied by a landmark or interior landmark so designated by the Landmarks Preservation Commission, or occupied by a #building# whose designation as a landmark or interior landmark has been calendared for public hearing and is pending before the Landmarks Preservation Commission.

(2) Design standards for a through #block# connection

(i) A through #block# connection shall provide a straight, continuous, unobstructed path at least 15 feet wide. If covered, the clear, unobstructed height of a through #block# connection shall not be less than 15 feet.

(ii) At no point shall the level of a through #block# connection be more than five feet above or below #curb level#. In all cases, the through #block# connection must provide a clear path, accessible to people with disabilities, through its entire length.

(iii) A through #block# connection may be located inside or outside of a #building#. The area of a through #block# connection located within a #building# shall be counted as #floor area#.

(iv) A through #block# connection located partially or wholly within a #building# shall adjoin and connect directly to the building's main lobby via unobstructed openings with an aggregate width exceeding that of any other entrances to the lobby.

(v) A through #block# connection located wholly or partially outside a #building# shall provide unobstructed access directly to the building's main lobby through the major entrance. For the purposes of this Section, the major entrance shall be that entrance to the main lobby which has the greatest aggregate width of clear openings for access.

(vi) Any portion of a through #block# connection located outside a #building# shall be illuminated throughout with a minimum level of illumination of not less than five horizontal foot candles (lumens per candle). Such illumination shall be maintained throughout the hours of darkness.

(vii) A through #block# connection shall at a minimum be accessible to the public from 8:00 a.m. to 7:00 p.m. on the days the #building# or #development# is open for business and shall have posted, in prominent, visible locations at its entrances, signs meeting the standards set forth in paragraph (h)(2)(viii) of this Section.

(viii) A through #block# connection shall provide the following information for public access at each public entry to the through #block# connection:

(a) For an unenclosed through #block# connection, the public access information shall be an entry plaque located at the entrance to the through #block# connection at each #street# frontage. The entry plaque shall contain:

(1) a public space symbol which is at least 14 inches square in dimension, has a white background, has a grid of four straight lines no greater than one-eighth inch wide and green in color and has a tree-shaped symbol as shown:

(Tree Symbol)

(2) lettering at least two inches in height stating "OPEN TO PUBLIC." This lettering shall be located within nine inches of the public space symbol; and

(3) an international Symbol of Access for people with disabilities that is at least three inches square.

The entry plaque shall be mounted with its center five feet above the elevation of the nearest walkable pavement on a wall or a permanent freestanding post. It shall be placed so that the entire entry plaque is obvious and directly visible without any obstruction, along every line of sight from all paths of pedestrian access to the through #block# connection, in a position that clearly identifies the entry to the connection.

(b) For an enclosed through #block# connection or a portion thereof:

(1) a public space symbol as described in paragraph (h)(2)(viii) of this Section, not less than six inches square, shall be mounted with its center five feet above the elevation of the nearest walkable pavement;

(2) lettering stating "PUBLIC ACCESS TO STREET," indicating the opposite #street# to which the through #block# connection passes and which lettering shall not be less than three inches in height and located not more than three inches away from the public space symbol; and

(3) lettering not more than two inches or less than one and a half inches in height stating "OPEN TO PUBLIC" with the hours and days of operation of the through #block# connection. This lettering shall be located not more than three inches from the public space symbol.

The above required information shall be permanently affixed on the glass panel of the entry doors of the through #block# connection

clearly facing the direction of pedestrian flow. The information shall be located not higher than six feet or lower than three feet above the level of the pedestrian path at the entry, and shall be in a format and color which will ensure legibility.

(i) Urban plaza

A maximum of 30 percent of the area of an #urban plaza# that faces a #street# intersection, or provides access to a major building entrance, may be counted toward meeting the pedestrian circulation space requirement.

A maximum of 3,000 square feet of a through #block urban plaza# may be counted toward meeting the pedestrian circulation space requirement.

For all other #urban plazas#, the first 10 feet of depth from the #street line# may be counted toward meeting the pedestrian circulation space requirement, provided that the #urban plaza# conforms to the design standards of a sidewalk widening as set forth in paragraph (f) of this Section.

All #urban plazas# shall comply with Section 37-04 (Requirements for Open Air Concourses, Sidewalk Widening and Urban Plazas).

Any area of permitted overlap between pedestrian circulation spaces or other amenities shall be counted only once toward meeting the required amount of pedestrian circulation space. Unobstructed access shall be provided between overlapping spaces.

37-074

Modification of design standards of pedestrian circulation spaces within existing buildings

The City Planning Commission may authorize a modification of any required minimum amount of pedestrian circulation space to be provided on #wide street# frontages and design standards, as indicated, for the following required pedestrian circulation spaces, to be provided within or under an existing #building# to remain on a #zoning lot#:

(a) Arcade: minimum width, minimum height, obstructions, minimum clear width between obstructions, minimum length, column sizes

(b) Building entrance recess area: minimum length, minimum depth from #street line#, minimum height, obstructions, clear space between obstructions and clear space between obstructions and building wall

(c) Corner arcade or corner circulation space: minimum depth, minimum width of clear path, minimum height, obstructions

(d) Through #block# connection: minimum width of unobstructed path, minimum height, through #block# level

The Commission may authorize a modification of design standards for pedestrian circulation spaces when the following findings are met:

- (1) a modification is needed because of the inherent constraints of the existing #building#;
- (2) the modification is limited to the minimum needed because of the inherent constraints of the existing #building#; and \_\_\_\_\_
- (3) the pedestrian circulation space being modified shall be equal in area, and substantially equivalent, to the required space in terms of quality, effectiveness and suitability for public use.

\* \* \*

74-634

Subway station improvements in commercial zones of 10 FAR and above in Manhattan

~~The City Planning Commission may grant, by special permit, after public notice and hearing and subject to a Board of Estimate action, grant a #floor area# bonuses, modify Section 37-01 (Special Urban Design Guidelines Streetscape), Section 37-02 (Applicability of Article II, Chapter 7, to Residential Plazas and Arcades), the provisions of #urban open space# in Section 12-10 (DEFINITIONS), and in a C5-5 District, height and setback and #rear yard# regulations up to but not exceeding 20 percent of the basic maximum #floor area ratio# permitted by the underlying district regulations, and may waive or modify the provisions of Article III, Chapter 7 (Special Regulations), and the #street wall# continuity provisions of Section 81-43 (Street Wall Continuity Along Designated Streets) for #developments# or #enlargements# located on #zoning lots# where which provide major improvements for to adjacent subway stations are provided in accordance with the provisions of this Section. For the purposes of this Section, "adjacent" shall mean that upon completion of the improvement, the #zoning lot# will~~ The subway stations in districts where such improvements may be constructed are listed in paragraph (a) of this Section. ~~The #zoning lot# for the #development# or #enlargement# on which such #floor area# bonus is requested shall be adjacent to the subway station for which the improvement is proposed. In order for the #zoning lot# of the #development# or #enlargement# to qualify as "adjacent," it must physically adjoin a subway station mezzanine, platform, concourse or connecting passageway, with no tracks intervening to separate the #zoning lot# from these elements. Subway stations where such improvements may be constructed are those stations located within the #Special Midtown District# as listed in Section 81-511 (Subway station improvements) and those stations listed in the following table:~~

(a) ~~Bonus eligible subway stations by line and zone~~

~~#Developments# or #enlargements# which provide major improvements to adjacent subway stations are eligible for a #floor area# bonus which shall not exceed 20 percent of the basic maximum #floor area ratio# permitted by the underlying district regulations. The stations eligible for bonus are as follows:~~

<u>Station</u>	<u>Line</u>	<u>District</u>
----------------	-------------	-----------------

Wall Street-Broadway	IRT (Lexington Ave)	<del>C5-5CR</del>
Fulton Street-Broadway	IRT (Lexington Ave)	<del>C5-5CR</del>
Brooklyn Bridge	IRT (Lexington Ave)	<del>C6-4</del>
8th Street	BMT (Broadway)	<del>C6-4</del>
23rd Street	BMT (Broadway)	<del>C5-2</del>
23rd Street	IRT (Lexington Ave)	<del>C5-2</del>
28th Street	IRT (Lexington Ave)	<del>C5-2</del>
33rd Street	IRT (Lexington Ave)	<del>C5-3</del>
34th Street	IND (8th Ave)	<del>C6-4</del>
59th Street	IRT (Lexington Ave)	<del>C5-2</del>
South Ferry	IRT (Bway/7th Ave)	<del>C5-5CR</del>
Cortlandt Street	IRT (Bway/7th Ave)	<del>C5-3</del>
Wall Street	IRT (Bway/7th Ave)	<del>C5-5</del>
Fulton Street	IRT (Bway/7th Ave)	<del>C5-5CR</del>
Park Place	IRT (Bway/7th Ave)	<del>C5-5CR</del>
Broad Street	BMT (Nassau)	<del>C5-5</del>
Fulton Street	BMT (Nassau)	<del>C6-4</del>
Chambers Street	BMT (Nassau)	<del>C6-4</del>
Whitehall Street	BMT (Broadway)	<del>C5-5CR</del>
Cortlandt Street	BMT (Broadway)	<del>C5-5</del>
City Hall	BMT (Broadway)	<del>C5-5CR</del>
8th Street	BMT (Broadway)	<del>C6-4</del>
Lexington Avenue ( <u>60th Street</u> )	BMT (Broadway)	<del>C6-4</del>
Broadway/Nassau	IND (8th Ave)	<del>C5-5CR</del>
Chambers Street	IND (8th Ave)	<del>C6-4 C5-3CR</del>
<del>50th Street</del>	<del>IND (8th Ave)</del>	<del>C6-4</del>

The selection of subway station improvements shall be on a case-by-case basis and shall be subject to the approval of the Metropolitan Transportation Authority, New York City Transit and the City Planning Commission. All such improvements shall comply with all applicable design standards of the current station planning guidelines of New York City Transit.

~~(b) — Compliance with Transit Authority design standards~~

~~The subway station improvement shall comply with all applicable design standards of the New York City Transit Authority's "Station Planning Guidelines" (Revised, 1975 and as may be subsequently revised).~~

~~(c) — Procedure~~

~~(1) — Pre application~~

~~The applicant shall submit schematic or concept plans for the proposed improvement to the Metropolitan Transportation Authority, the Transit Authority and the City Planning Commission.~~

~~(2) — Application pre certification~~

~~After review and agreement on the concept by the Metropolitan Transportation Authority, Transit Authority and the City Planning Commission, the applicant shall submit necessary documentation in conformance with the New York City Transit Authority's "Guidelines for Submission and Approval of Outside Projects". Prior to certification by the City Planning Commission, the Transit Authority shall provide a letter to the Commission containing conceptual approval of the improvement and a statement of any special considerations regarding the Transit Authority's future operation of the improvement.~~

- ~~(3) The special permit application to the City Planning Commission shall include information and justification sufficient to provide the Commission with a basis for evaluating the benefits to the City from the proposed improvement and determining the appropriate amount of bonus #floor area# and for making the findings for the modifications of Section 37-01, Section 37-02 and height and setback regulations in C5-5 Districts.~~
- ~~(4) The special permit application shall include any request for modification of special urban design guidelines pursuant to Section 74-634 paragraph (e) and of height and setback and #rear yard# regulations pursuant to Section 74-634 paragraph (f).~~
- ~~(5) Uniform Land Use Review Procedure certification~~

~~The City Planning Commission shall not certify any application under the Uniform Land Use Review Procedure until the requisite letter from the Transit Authority has been received and incorporated in the application. Such letter may be subject to subsequent execution of a final agreement with the developer.~~

- ~~(6) Prior to the granting of a special permit:~~
  - ~~(i) the Transit Authority shall have submitted a letter to the City Planning Commission:~~
    - ~~(a) stating that the drawings and other documents submitted by the applicant have been determined by the Transit Authority to be of sufficient scope and detail to fix and describe the size and character of the subway improvement as to architectural, structural, mechanical and electrical systems; materials; relationship to existing site conditions; and such other elements as may be appropriate; and~~
    - ~~(b) confirming that the construction of the subway improvement in accordance with such submission is feasible; and~~
  - ~~(ii) the applicant shall sign a legally enforceable instrument, running with the land containing complete drawings of the improvement and setting forth the obligations of owner and developer, their successors and assigns, to construct~~

and maintain the improvement, establish a construction schedule and provide a performance bond for completion of the improvement.

- (7) — ~~The restrictive declarations and any instrument creating a transit easement on the #zoning lot# shall be recorded against the #zoning lot# in the Office of the Register of the City of New York for the borough in which the improvement or easement is being created, and a certified copy of the instrument shall be submitted to the City Planning Commission and the Transit Authority.~~
- (8) — ~~Prior to obtaining a temporary certificate of occupancy for the bonus #floor area#, the bonused subway improvement shall be substantially complete, which shall, for this purpose, mean usable by the public, as determined by the Transit Authority.~~
- (9) — ~~Prior to obtaining a permanent certificate of occupancy, the bonused subway improvement must be 100 percent complete in accordance with the approved plans and such completion shall have been certified by the Transit Authority.~~

(d) — Floor area bonus

~~The amount of the #floor area# bonus shall be at the discretion of the City Planning Commission and may range from no #floor area# bonus to the maximum amount allowable by special permit pursuant to the provisions of this Section. For a #residential# or mixed #use development#, when a #floor area# bonus is granted pursuant to this Section, alone or in combination with other bonuses, the #lot area# requirements of Section 23-20 (DENSITY REGULATIONS REQUIRED LOT AREA PER DWELLING UNIT, LOT AREA PER ROOM, OR FLOOR AREA PER ROOM) and 35-40 (APPLICABILITY OF LOT AREA REQUIREMENTS TO MIXED BUILDINGS) shall not apply. Instead for every 750 square feet of gross #residential floor area# provided, there shall be not more than one #dwelling unit#. In determining whether to grant a special permit and the precise amount of #floor area# bonus pursuant to the special permit, the Commission shall make all of the following findings:~~

- (1) — ~~the degree to which the station's general accessibility, rider orientation and safety will be improved by the provision of new connections, additions to circulation space or easing of circulation bottlenecks;~~
- (2) — ~~provision of escalators or elevators where justified by traffic or depth of mezzanine or platform below #street# level;~~
- (3) — ~~convenience and spaciousness of #street# level entrance and compatible relationship to the ground floor #uses# of the #development# or #enlargement#;~~
- (4) — ~~improvements in the station's environment by provision for daylight access, or improvements to noise control, air quality, lighting or other architectural treatments.~~

~~(e) Modification of special urban design guidelines and urban open space~~

~~The City Planning Commission may modify the requirements of Section 37-01 (Special Urban Design Guidelines Streetscape), Section 37-02 (Applicability of Article II, Chapter 7, to Residential Plazas and Arcades), and the requirement for #urban open space# in Section 37-04 (Requirements for Open Air Concourses, Sidewalk Widening and Urban Plazas) if it finds the provisions of a subway improvement cannot be accommodated without modification to these requirements.~~

~~(f) Modification of height and setback and yard regulations~~

~~In a C5-5 District, in the case of on-site subway station improvements that generate #floor area# bonus pursuant to Section 24-634, the City Planning Commission may permit modification of the applicable regulations in Sections 33-26 to 33-30, inclusive, relating to #rear yard# regulations, or in Sections 33-41 to 33-45, inclusive, relating to height and setback regulations.~~

~~The City Planning Commission may grant such modification upon consideration that the applicable height and setback or #rear yard# regulations cannot be complied with by some method feasible for the applicant to pursue because of the provision of a subway station improvement, the size or irregular shape of the lot, the size or irregular shape of the #block# or width of #streets#. The Commission shall also consider the characteristics of surrounding development. The Commission shall require, where appropriate, sufficient safeguards to insure the free flow of pedestrian and vehicular traffic in the general area.~~

~~The City Planning Commission may prescribe additional appropriate conditions and safeguards to enhance the character of the surrounding area.~~

(a) Pre-application requirements

Prior to submitting an application for a special permit pursuant to this Section, the applicant shall submit a schematic or concept plan for the proposed improvement to the Metropolitan Transportation Authority, New York City Transit and the Chairperson of the City Planning Commission.

(b) Requirements for application

An application for a special permit pursuant to this Section shall include a letter from New York City Transit to the City Planning Commission containing conceptual approval of the improvement and a statement of any special considerations regarding New York City Transit's future operation of the improvement. The applicant shall submit all information and justification sufficient to enable the Commission to:

- (1) evaluate the benefits to the City;
- (2) determine the appropriate amount of bonus #floor area#; and

- (3) where applicable, assess the advantages and disadvantages of waiving or modifying #street wall# continuity requirements.

(c) Conditions

- (1) For a #residential# or mixed #development#, when a #floor area# bonus is granted pursuant to this Section, alone or in combination with other bonuses, the #lot area# requirements of Sections 23-20 (DENSITY REGULATIONS-REQUIRED LOT AREA PER DWELLING UNIT, LOT AREA PER ROOM OR FLOOR AREA PER ROOM) and 35-40 (APPLICABILITY OF LOT AREA REQUIREMENTS TO MIXED BUILDINGS) shall not apply. Instead, for every 790 square feet of #residential floor area# provided, there shall be not more than one #dwelling unit#.
- (2) Within the #Special Midtown District#, for a #development# or #enlargement# within the Theater Subdistrict on a #zoning lot# containing a theater designated as listed pursuant to Section 81-742 (Listed theaters), the Commission shall find that the requirements of Section 81-743 (Required assurances for continuance of legitimate theater use) have been met.
- (3) Within the #Special Midtown District#, for a #development# or #enlargement# located on a #zoning lot# divided by a Theater Subdistrict Core boundary, as defined in Section 81-71 (General Provisions), the amount of #lot area# eligible for determining permitted bonus #floor area# shall not exceed an amount equal to twice the #lot area# of that portion of the #zoning lot# located outside the Theater Subdistrict Core.

(d) Findings

- (1) In determining the amount of #floor area# bonus, the City Planning Commission shall consider the degree to which:
- (i) the general accessibility and security of the subway station will be improved by the provision of new connections, additions to or reconfigurations of circulation space, including provision of escalators or elevators; and
- (ii) significant improvements to the station's environment by provision for direct daylight access, or improvements to noise control, air quality, lighting or rider orientation and satisfactory integration of the #street# level entryway into the #development# or #enlargement# will occur.
- (2) In determining modifications to the requirements of Article III, Chapter 7 (Special Regulations), the Commission shall find that the provisions of a subway improvement cannot be accommodated without modification to these requirements.

(3) In determining modifications to the #street wall# continuity provisions of Section 81-43 in the #Special Midtown District#, the Commission shall find that the modification will permit the proposed design to provide for access of daylight and air to the subway platform, mezzanine or concourse and that the advantages of such access outweigh the disadvantages incurred by the interruption of #street wall# and retail continuity.

(e) Procedural requirements

Prior to the granting of a special permit, the City Planning Commission shall be provided with the following:

(1) a letter from New York City Transit stating that the drawings and other documents submitted by the applicant have been determined by New York City Transit to be of sufficient scope and detail to fix and describe the size and character of the subway improvement as to architectural, structural, mechanical and electrical systems, materials, relationship to existing site conditions and such other conditions as may be appropriate, and that the construction of the subway improvement in accordance with such submission is feasible.

(2) a legally enforceable instrument running with the land and signed by the applicant and all parties in interest, other than parties in interest who have waived and subordinated their interests, containing complete drawings of the improvement and setting forth the obligations of owner and developer, their successors and assigns, to construct and provide capital maintenance for the improvement, establish a construction schedule and provide a performance bond for completion of the improvement.

(f) Recordation & completion procedures

Any instrument creating a transit easement on the #zoning lot# shall be recorded against the #zoning lot# in the Office of the Register of the City of New York and a certified copy of the instrument shall be submitted to the City Planning Commission and New York City Transit. The applicant shall not apply for nor accept a temporary certificate of occupancy for the bonus #floor area#, and the Department of Buildings shall not issue such a temporary certificate of occupancy, until New York City Transit has determined that the bonused subway improvement is substantially complete which shall, for this purpose, mean open to and usable by the public.

The applicant shall not apply for or accept a permanent certificate of occupancy for the #development# or #enlargement#, nor shall the Department of Buildings issue such permanent certificate of occupancy, until the bonused subway improvement has been completed in accordance with the approved plans and such completion has been certified by New York City Transit.

The City Planning Commission may prescribe additional appropriate conditions and safeguards to enhance the character of the surrounding area.

\* \* \*

Article VIII  
Special Purpose Districts

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Chapter 1

## Special Midtown District

81-00

### GENERAL PURPOSES

The "Special Midtown District" established in this Resolution is designed to promote and protect public health, safety and general welfare. These general goals include, among others, the following specific purposes:

- (a) to strengthen the business core of Midtown Manhattan by improving the working and living environments;

\* \* \*

- (h) to preserve, protect and enhance the character of the Theater Subdistrict as the location of the world's foremost concentration of legitimate theaters and an area of diverse uses of a primarily entertainment and entertainment-related nature;

- (i) to strengthen and enhance the character of the Eighth Avenue Corridor and its relationship with the rest of the Theater Subdistrict and with the Special Clinton District;

- (j) to create and provide a transition between the Theater Subdistrict and the lower-scale Clinton community to the west;

- ~~(k)~~ to preserve, protect and enhance the scale and character of Times Square, the heart of New York City's entertainment district, and the Core of the Theater Subdistrict, which are characterized by a unique combination of building scale, large illuminated signs and entertainment and entertainment-related uses;

- ~~(l)~~ to preserve, protect and enhance the character of Fifth Avenue as the showcase of New York and national retail shopping;

- ~~(m)~~ to preserve the midblock area around the Museum of Modern Art for its special contribution to the historic continuity, function and ambience of Midtown;

- ~~(n)~~ to expand and enhance the pedestrian circulation network connecting Grand Central Terminal to surrounding development, to minimize pedestrian congestion and to protect the area's special character;

- ~~(o)~~ to provide freedom of architectural design within limits established to assure adequate access of light and air to the street, and thus to encourage more attractive and economic building forms without the need for special development permissions or "negotiated zoning"; and

~~(n)~~(p) to promote the most desirable use of land and building development in accordance with the District Plan for Midtown and thus conserve the value of land and buildings and thereby protect the City's tax revenues.

81-01  
Definitions

For purposes of this Chapter, matter in italics is defined in Sections 12-10 (DEFINITIONS), in Section 81-261 (Definitions), or in Section 81-271 (Definitions).

Special Midtown District  
(repeated from Section 12-10)

The "Special Midtown District" is a Special Purpose District designated by the letters "MiD" in which special regulations set forth in Article VIII, Chapter 1, apply. The #Special Midtown District# appears on the #zoning maps# superimposed on other districts, and its regulations supplement and modify those of the districts on which it is superimposed.

Special Clinton District  
(repeated from Section 12-10)

The #Special Clinton District# is a Special Purpose District designated by the letters "CL" in which special regulations set forth in Article IX, Chapter 6 apply.

81-02  
General Provisions

\* \* \*

81-022  
Applicability of Special Transit Land Use District regulations

Except as otherwise provided in paragraphs (a) and (b) of this Section, wherever the #Special Transit Land Use District# includes an area which also lies within the #Special Midtown District#, as described in paragraph (c), the requirements of the #Special Transit Land Use District# as set forth in Article IX, Chapter 5, shall apply.

- (a) However, the requirements of Article IX, Chapter 5, shall be waived where the City Planning Commission certifies, in the case of a specific #development# otherwise subject to those requirements, that:
  - (1) the developer has agreed in a writing recorded against the property to implement a plan approved by the City Planning Commission and the New York City Transit Authority for off-street relocation of a subway stair entrance in accordance with the requirements

~~of Section 81-47 (Off-Street Relocation of a Subway Stair), pursuant to Section 81-46 (Off-Street Relocation of a Subway Stair), or~~

- (2) the developer has agreed in a writing recorded against the property to implement a plan approved by the Commission and ~~the New York City Transit Authority~~ for the provision of a subway station improvement ~~in accordance with the provisions of Section 81-53 (Subway Station Improvements).~~, pursuant to Section 81-511 (Subway station improvements).

\* \* \*

81-023

Applicability of Special Clinton District Regulations

Wherever the #Special Midtown District# includes an area which also lies within the #Special Clinton District#, the regulations of the #Special Clinton District# as set forth in Article IX, Chapter 6, shall also apply. In the event of any conflict or discrepancy between the regulations, the more restrictive regulations shall apply in accordance with Section 11-22 (Application of Overlapping Regulations).

The portion of the #Special Clinton District# within the #Special Midtown District# includes the area bounded by a line 150 feet west of Eighth Avenue, West 45th Street, Eighth Avenue and West 42nd Street. The area is designated on the #zoning maps# by the letters CL-MiD.

81-02381-024

Integration clauses

\* \* \*

81-04

Subdistricts

In order to carry out the purposes and provisions of this Chapter, four special subdistricts are established within the #Special Midtown District#. In each of these subdistricts certain special regulations apply which do not apply in the remainder of the #Special Midtown District#. The subdistricts are outlined on Map 1 (Special Midtown District and Subdistricts) in Appendix A.

The subdistricts, together with the sections of this Chapter specially applying to each, are as follows:

Subdistricts	Sections Having Special Application
The Grand Central Subdistrict	81-60
The Theater Subdistrict	81-70
The Fifth Avenue Subdistrict	81-80
The Preservation Subdistrict	81-90

The subdistricts are also subject to all other regulations of the #Special Midtown District#, and, where applicable pursuant to Section 81-023, the #Special Clinton District# and the underlying districts, except as otherwise specifically provided in the subdistrict regulations themselves.

81-062

Applicability of Chapter 4 of Article VII

Within the #Special Midtown District#, the following provisions regarding special permits by the City Planning Commission shall not be applicable:

Section 74-72 (Bulk Modification)

Section 74-74 (General Large-Scale Development)

Section 74-75 (Educational Construction Fund Projects)

\* \* \*

81-063

Regulations for Developments or Enlargements on Lots Divided by District Boundaries, Within or Partially Within the Theater Subdistrict

Within the Theater Subdistrict of the #Special Midtown District#, the provisions of ~~Chapter 7 of Article VII, Chapter 7~~ (Special Provisions for Zoning Lots Divided by District Boundaries), are modified in part by the provisions of Section 81-746 (~~Special modification of~~ Additional provisions for zoning lots divided by district or subdistrict core boundaries).

\* \* \*

81-20

BULK REGULATIONS

81-21

Floor Area Ratio Regulations

The #floor area ratio# regulations of the underlying districts are modified in accordance with the provisions of this Section or Section 81-241 (Maximum floor area ratios for a residential building or the residential portion of a mixed building).

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:

*(delete existing table and replace with following table)*

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

Means for Achieving Permitted FAR Levels on a #Zoning Lot#		Maximum Floor Area Ratio (FAR)						
		Outside the Grand Central Subdistrict					Grand Central Subdistrict	
		C5-P	C6-4 C6-5 M1-6	C5-2.5 C6-4.5 C6-5.5 C6-6.5	C6-7T	C5-3 C6-6 C6-7	C5-2.5	C5-3 C6-6
A	Basic Maximum FAR	8.0	10.0	12.0	14.0	15.0	12.0	15.0
B	<i>Maximum As-of-Right #Floor Area# Allowances: (District-Wide Incentives)</i>							
	Urban plaza (Section 81-23)	-	1.0 <sup>1,2</sup>	1.0 <sup>1</sup>	-	1.0 <sup>2</sup>	--	--
C	MAXIMUM TOTAL FAR WITH AS-OF-RIGHT INCENTIVES	8.0	11.0 <sup>1,2</sup>	13.0 <sup>1</sup>	14.0	16.0	12.0	15.0
D	<i>Maximum Special Permit #Floor Area# Allowances: (District-Wide Incentives)</i>							
	Subway station improvement (Section 81-511)	-	2.0 <sup>1,7</sup>	2.4 <sup>1</sup>	-	3.0	2.4	3.0
E	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
F	<i>Maximum As-of-Right #Floor Area# Allowances in Theater Subdistrict:</i>							
	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, paragraph a)	-	2.0 4.4 <sup>3</sup>	2.4	2.8	3.0	--	-
	Inclusionary Housing (Sections 23-90 and 81-22)	-	2.0 <sup>4</sup>	-	-	-	--	-
G	MAXIMUM TOTAL FAR WITH AS-OF-RIGHT FLOOR AREA ALLOWANCES IN THEATER SUBDISTRICT	-	12.0 14.4 <sup>3</sup>	14.4	16.8	18.0	--	-
H	<i>Maximum Special Permit #Floor Area# Allowances in Theater Subdistrict:</i>							
	Rehabilitation of listed theater (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" (paragraph b of Section 81-744)	-	-	-	2.8	3.0	--	-
	Floor Area for New Legitimate Theater (Section 81-748)	-	-	-	2.0	2.0		
	MAXIMUM TOTAL FAR WITH THEATER SUBDISTRICT OR DISTRICT-WIDE INCENTIVES, AND AS-OF-RIGHT INCENTIVES	8.0	14.4	14.4	21.6	21.6	14.4	18.0
	<i>Maximum FAR of Lots Involving Landmarks:</i>							
	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	13.0 <sup>5</sup>	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	2.0	2.4	No limit	No limit	2.4	No limit
	(b) a "receiving lot" (Section 81-634)	-	-	-	-	-	1.0	1.0
	(c) a "receiving lot" (Section 81-635)	-	-	-	-	-	9.6	6.6
	MAXIMUM TOTAL FAR WITH TRANSFERRED DEVELOPMENT RIGHTS FROM LANDMARK #ZONING LOT#, THEATER SUBDISTRICT OR DISTRICT-WIDE INCENTIVES, AND AS-OF-RIGHT INCENTIVES	9.6	14.4	14.4	No limit	No limit	21.6	No limit <sup>6</sup>

- <sup>1</sup> Not available for #zoning lots# located wholly within Theater Subdistrict Core.
- <sup>2</sup> Not available within the Eighth Avenue Corridor.
- <sup>3</sup> Applicable only within that portion of the Theater Subdistrict also located within the Special Clinton District.
- <sup>4</sup> 12.0 in portion of C6-5.5 District within the Theater Subdistrict Core.
- <sup>5</sup> Limited to 21.6 FAR on a "receiving lot" pursuant to Section 81-635 in the Grand Central Subdistrict.
- <sup>6</sup> Not available on west side of Eighth Avenue within the Eighth Avenue Corridor.

\* \* \*

#### 81-22

##### As-of-Right Floor Area Bonuses

As-of-right #floor area# bonuses are not permitted in the #Special Midtown District#, except in accordance with the provisions of the following Sections:

Section 81-23 (Floor Area Bonus for Urban Plazas).

~~Section 81-748 (Floor area bonus for through block gallerias)~~

In addition, the provisions of Section 23-90 (INCLUSIONARY HOUSING) shall be applicable in that portion of the #Special Midtown District# which is also within the #Special Clinton District# pursuant to Section 81-023 (Applicability of the Special Clinton District Regulations).

Any floor area bonus granted by certification for through #block# gallerias prior to August 6, 1998, shall remain in effect, provided however that such certification shall automatically lapse if substantial construction, in accordance with the plans for which such certification was granted, has not been completed within four years from the effective date of such certification.

#### 81-23

##### Floor Area Bonus for Urban Plazas

Within the #Special Midtown District#, for each square foot of #urban plaza# provided on a #zoning lot#, the basic maximum #floor area# permitted on that #zoning lot# under the provisions of Section 81-211 (Maximum floor area ratio for non-residential or mixed buildings) may be increased by six square feet, provided that in no case shall such bonus #floor area# exceed a #floor area ratio# of 1.0.

This Section shall be applicable in all underlying districts throughout the #Special Midtown District#, except that:

- (a) there shall be no #floor area# bonus for an #urban plaza# on #zoning lots# in the C5P District within the Preservation Subdistrict;
- (b) no #development# or #enlargement# on a #zoning lot# shall receive a bonus for an #urban plaza# that is within 50 feet of a #street line# of a designated #street# on which retail or #street wall# continuity is required, pursuant to Sections 81-42 (Retail Continuity Along Designated Streets) or 81-43 (Street Wall Continuity Along Designated Streets);
- (c) no #development# or #enlargement# on a #zoning lot#, any portion of which is within the Theater Subdistrict Core as defined in Section 81-71 (General Provisions), shall receive a bonus for an #urban plaza#; and
- (d) there shall be no #floor area# bonus for an #urban plaza# on #zoning lots# in the Grand Central Subdistrict.

All #urban plazas# provided within the #Special Midtown District# shall comply with the requirements for #urban plazas# set forth in Section 37-04 (Requirements for Open Air Concourses, Sidewalk Widening and Urban Plazas).

A major portion of an #urban plaza# may overlap with a sidewalk widening which may be provided to fulfill the minimum pedestrian circulation space requirements set forth in Section 81-45 (~~Provision of Pedestrian Circulation Space~~), provided that the overlapping portion of the #urban plaza# also conforms to the design standards of Section ~~81-45~~ 37-07 (Requirements for Pedestrian Circulation Space) for a sidewalk widening. Such sidewalk widening may be included in the major portion of an #urban plaza# for purposes of calculating the proportional restrictions set forth in Section 37-04, paragraph (e).

\* \* \*

81-24  
 Floor Area, Density and Building Spacing Regulations for Residential Uses

81-241  
 Maximum floor area ratios for a residential building or the residential portion of a mixed building

For #residential buildings# or #residential# portions of #mixed buildings# in the #Special Midtown District#, the maximum #floor area ratio# for each underlying district is as follows:

- (a) In the C5-P District the maximum #floor area ratio# is 8.0, and no additional #floor area# shall be allowed above this limit.
- (b) In all underlying districts other than the C5-P District, except as provided in paragraph (c) of this Section, the maximum #residential floor area ratio# is 10.0.
- (c) A #residential building# or the #residential# portion of a #mixed building# in any underlying district other than a C5-P, C6-4 or C6-5 District or a #residential building# or the #residential#

portion of a #mixed building# in a C6-4 or C6-5 District within the Theater Subdistrict which has been granted bonus #floor area# or other #floor area# allowances in accordance with the provisions of Section 81-741 (General provisions), shall qualify for a maximum #residential floor area ratio# of 12.0 if the #building# includes recreational space for the #residential# occupants in an amount not less than 6.5 square feet for each #room#, or a total area of at least 5,000 square feet, whichever is greater. The recreational space may be located at any level including a roof. Such recreational space shall:

- (1) be restricted to #residential# occupants of the #building# and their guests for whom no admission or membership fees may be charged;
- (2) be directly accessible from a lobby or other public area served by the #residential# elevators;
- (3) be landscaped, including trees or shrubbery, except where covered or developed with recreational facilities and seating areas;
- (4) contain not less than 500 square feet of continuous area on a single level with no dimension of less than 15 feet;
- (5) have not less than 50 percent of the area open from its lowest level to the sky. The remaining portion may be roofed and up to 50 percent of its perimeter may be enclosed. In no event may more than 25 percent of the required recreational space be fully enclosed. All enclosures shall be transparent except when located within the #building#. Covered areas shall contain recreational facilities or seating areas.

A copy of requirements (1) through (5), as set forth in this paragraph Section, shall be permanently posted in a conspicuous place within each recreational space.

~~(d) — A #residential building# or the #residential# portion of a #mixed building# in a C6-4 or C6-5 underlying district within the Theater Subdistrict may qualify for bonus #floor area# or other #floor area# allowances in accordance with the provisions of Section 81-741 (General provisions), provided that the #residential floor area ratio# with such #floor area# allowances shall not exceed 12.0 and that such #building# also provides recreational space for the #residential# occupants in accordance with the requirements of paragraph (c) of this Section.~~

~~(e) — The applicable maximum #floor area ratio# for a #residential building# or the #residential# portion of a #mixed building# shall not be increased by any bonuses or other #floor area# allowances except as provided in paragraph (c) or (d) of this Section.~~

\* \* \*

81-25

General Provisions Relating to Height and Setback of Buildings

For all #buildings# in the #Special Midtown District#, except as provided in Section 81-90 (SPECIAL REGULATIONS FOR PRESERVATION SUBDISTRICT), the height and setback regulations of the underlying districts, ~~including tower regulations,~~ are superseded by the provisions of this Section, and by the two alternate sets of regulations controlling the height and setback of #buildings#, as set forth in Sections 81-26 and 81-27, respectively.

An applicant for plan approval by the Department of Buildings may elect to be governed by the provisions of either Section 81-26 (Height and Setback Regulations - Daylight Compensation) or 81-27 (Alternate Height and Setback Regulations - Daylight Evaluation) in addition to the provisions of this Section, ~~and of Section 81-622 (Special height and setback requirements) applicable to a #development# or #enlargement# within the Grand Central Subdistrict.~~

This Section sets forth the provisions which are common to both sets of regulations.

\* \* \*

#### 81-40 MANDATORY DISTRICT PLAN ELEMENTS

\* \* \*

#### 81-413 Provisions for persons with disabilities

All mandatory district plan elements required by the provisions of Section 81-45 (~~Provision of Pedestrian Circulation Space~~) or ~~Section 81-46 (Through Block Connection)~~ shall be accessible to persons with disabilities, meeting the standards set forth in Section 37-04 (Requirements for Open Air Concourses, Sidewalk Widening and Urban Plazas), paragraph (d).

\* \* \*

#### 81-42 Retail Continuity along Designated Streets

On designated retail #streets# (see Appendix A, Map 2), for any #developments# or #enlargements# fronting on such #streets#, #uses# located on the ground floor level or within ~~5~~ five feet of #curb level# shall be limited to retail, personal service or amusement #uses# permitted by the underlying zoning district regulations but not including #uses# in Use Groups 6B, 6E, 7C, 7D, 8C, 8D, 9B, 10B, 11 and 12D or automobile showrooms or plumbing, heating or ventilating equipment showrooms. Museums and libraries shall be permitted. A # building's #street# frontage shall be allocated exclusively to such #uses# except for lobby space or entrance space, entrance areas to subway station improvements for which bonus #floor area# is granted and #street wall# continuity restrictions waived pursuant to the provisions of Sections ~~81-53~~ 74-634 (Subway station improvements in commercial zones of 10 FAR and above in Manhattan) and 81-511 (Subway station improvements), or one or more of the following pedestrian circulation spaces subject to the #street wall# continuity requirements of Section 81-43: relocated subway stairs conforming to the requirements and standards of Section ~~81-47~~ 37-03 (Off-Street Relocation or Renovation of a Subway Stair); and through #block# connections

conforming to the provisions of ~~Sections~~ paragraph (h) of Section 37-073 and Section 81-46 (Off-street Relocation or Renovation of a Subway Stair).

\* \* \*

81-43  
Street Wall Continuity Along Designated Streets

\* \* \*

Pedestrian circulation spaces may be provided to meet the requirements of Sections 81-45 (Pedestrian Circulation Space) or 81-46 or 81-47 (Off-street Relocation or Renovation of a Subway Stair) subject to the setback restrictions of this Section and to the minimum length of the #street wall# subject to such setback restrictions. However, the City Planning Commission may waive such restrictions for a subway entrance area which is part of a subway station improvement for which bonus #floor area# is granted, in accordance with the provisions of Sections 81-53 74-634 (Subway station improvements in commercial zones of 10 FAR and above in Manhattan) and 81-511 (Subway Sstation Iimprovements).

\* \* \*

. . . The restrictions on recesses shall not apply to arcades, corner arcades, subway stairs relocated within the #building#, through #block# connections within the #building# or building entrance recess areas within the #building#, where such spaces are provided in accordance with the requirements and design standards of Sections 81-45, 81-46 or 81-47 37-07 (Requirements for Pedestrian Circulation Space) and provided that such spaces shall be subject to a maximum height limit of 30 feet. Any recesses in the #residential# portion of a #building# shall comply with the #outer court# regulations of Section 23-84 (Outer Court Regulations).

\* \* \*

No arcades, sidewalk widenings or #urban plazas# shall be permitted on Fifth Avenue, 42nd 34<sup>th</sup> Street, 34<sup>th</sup> 42<sup>nd</sup> Street or 57th Street frontages. Between 42nd and 56th Street, no arcades or #urban plazas# shall be permitted on Eighth Avenue. Between 43rd and 50th Streets, no arcades or #urban plazas# shall be permitted on Seventh Avenue or Broadway and, with the exception of marquees and #signs#, any area between the Seventh Avenue or Broadway #street line# and any required #street wall# below the height of the first required setback, including permitted recesses, shall be open from #curb level# to the sky in its entirety. Any such area shall be at the same elevation as the adjoining sidewalk, directly accessible to the public at all times and free of all obstructions at ground level, including #street# trees. On the remaining #streets# designated for #street wall# continuity, arcades, if provided, shall be not less than 10 feet in depth and not more than 30 feet high. Arcades shall not be counted toward the recess allowances.

For #zoning lots# between 43rd and 50th Streets with #street# frontage on Seventh Avenue and/or Broadway the minimum and maximum heights of #street walls# subject to the setback restrictions on all #street# frontages shall be in accordance with Section 81-75 (Special Street Wall and Setback Requirements).

For #zoning lots# located wholly or partially within the Eighth Avenue Corridor, the minimum and maximum heights of #street walls# subject to the setback restrictions on all #street# frontages shall be in accordance with Section 81-75 (Special Street Wall and Setback Requirements.

On Fifth Avenue, the minimum required #street wall# height without setback shall be 85 feet and the maximum allowable #street wall# height without setback shall be 125 feet. Above the maximum #street wall# height, a setback of at least 10 feet shall be required. (See Section 81-83)

Existing #buildings# on a #zoning lot# shall be included in measurements of the #street wall#. No existing #building# shall be altered such that a #non-compliance# with the provisions of this Section is created, nor shall an existing degree of #non-compliance# with these provisions be increased.

\* \* \*

81-45

Provision of Pedestrian Circulation Space

~~Within the boundaries of the #Special Midtown District#, except as provided in Section 81-453- (Exemptions from the pedestrian circulation space requirements), all new #developments# or #enlargements# on #zoning lots# of 5,000 square feet or larger and providing more than 70,000 square feet of new #floor area#, shall provide a minimum amount of pedestrian circulation space at the rate provided in Table A.~~

TABLE A  
MINIMUM PEDESTRIAN CIRCULATION SPACE REQUIREMENTS

<del>Lot Size in Square Feet</del>	<del>Minimum Area of Pedestrian Circulation Space</del>
<del>5,000 to 20,000</del>	<del>1 square foot per 350 square feet of new #floor area#</del>
<del>Above 20,000</del>	<del>1 square foot per 300 square feet of new #floor area#</del>

~~The pedestrian circulation space provided shall be of one or more of the following types: sidewalk-widening, arcade, corner arcade, corner circulation space, building entrance recess area, through-#block# connection, subway stair relocation, renovation or reconstruction of a subway stair pre-existing on the #zoning lot#, or off-street rail mass transit access improvement.~~

~~Each #zoning lot# shall be categorized as either a #corner lot#, #through lot# or #interior lot#, and pedestrian circulation space shall be provided on each #zoning lot# in at least one of the applicable types or combinations of types outlined in Table B.~~

Such pedestrian circulation space shall meet the requirements set forth in Sections 81-451 (Design standards for pedestrian circulation spaces), 81-46 (Through Block Connection), 81-47 (Off Street Relocation or Renovation of a Subway Stair) or 81-49 (Off Street Improvement of Access to Rail Mass Transit Facility). Arcades shall not be subject to the provisions of Section 27-60 (ARCADES), and sidewalk widenings shall not be subject to the provisions of Section 37-04 (Requirements for Open Air Concourses, Sidewalk Widenings and Urban Plazas).

In addition, certain amenities for which bonuses are granted may count toward the minimum area of pedestrian circulation space in accordance with the provisions of Section 81-452 (Bonused amenities qualifying as pedestrian circulation spaces).

Any area of permitted overlap between pedestrian circulation spaces or amenities shall be counted only once toward the minimum area of pedestrian circulation space. Unobstructed access shall be provided between overlapping spaces.

**TABLE B**  
**LOT TYPE WHERE CIRCULATION SPACE MAY BE PROVIDED**

Type of Circulation Space (Section 81-45)	#Corner Lot#	#Through Lot#	#Interior Lot#
Sidewalk Widening	X	X	X
Corner Circulation Space	X		
Arcade	X	X	X
Corner Arcade	X		
Building Entrance Recess Area	X	X	X
Through #Block# Connection	X	X	
Subway Stair Relocation or Renovation	X	X	X
Off Street Rail Mass Transit Access Improvement	X	X	X

No arcades or sidewalk widenings shall be permitted on Fifth Avenue, 42nd Street, 34th Street or 57th Street frontages or on any #street# frontage within the Preservation Subdistrict. Between 43rd and 50th Streets, no arcades shall be permitted parallel to and along Seventh Avenue or Broadway and where pedestrian circulation space is provided along such #street# frontages, #signs# and marquees shall be permitted as exceptions to the requirements related to obstructions or permitted obstructions of Section 81-451 (Design standards for pedestrian circulation spaces). Special dimensional requirements for arcades and sidewalk widenings along designated #streets# are set forth in Section 81-43 (Street Wall Continuity along Designated Streets).

New #developments# or #enlargements# on a #zoning lot# having a full #block# frontage on a #wide street# other than Fifth Avenue, 42nd Street, 34th Street, or 57th Street shall provide a minimum of 50 percent of their required pedestrian circulation space on that #wide street#.

In the case of a #zoning lot# having two full #block# frontages on #wide streets#, this minimum amount may be allocated on either one or both #wide streets#; where each #street# bounding a #zoning lot# with at least one full #block# frontage is a #wide street#, the minimum amount may be allowed on one or more of those #wide streets#.

Within the #Special Midtown District#, all new #developments# or #enlargements# on #zoning lots# of 5,000 square feet or larger with more than 70,000 square feet of new #floor area# shall provide pedestrian circulation space in accordance with the provisions of Section 37-07 (Requirements for Pedestrian Circulation Space), as modified by the provisions of this Section.

In addition to the types of pedestrian circulation spaces listed in Section 37-07, the following may be counted toward meeting the minimum pedestrian circulation space requirement:

- (a) up to a maximum of 3,000 square feet of an access improvement to rail mass transit provided pursuant to Section 81-48 (Off-Street Improvement of Access to Rail Mass Transit Facility);
- (b) within the Theater Subdistrict, theater waiting space provided pursuant to Section 81-451 (Theater waiting space).

However, pedestrian circulation space shall not be required if any of the following conditions exist:

- (1) the #zoning lot# is entirely occupied by a #building# of no more than one #story# in height;
- (2) the #zoning lot# is an #interior lot# fronting on a #wide street# with less than 80 feet of #street# frontage;
- (3) the #zoning lot# is an #interior# or #through lot# fronting only on a #street# or #streets# where arcades, sidewalk widenings or #urban plazas# are prohibited;
- (4) the #zoning lot# is an #interior lot# fronting on either 34th Street, 42nd Street, 57th Street or Fifth Avenue, with another interior frontage of lesser length on any other #street#; or
- (5) the #zoning lot# is a #through lot# with both #street# frontages less than 25 feet in length.

New #developments# or #enlargements# on a #zoning lot# having a full #block# frontage on a #wide street# other than Fifth Avenue, 34th Street, 42nd Street or 57th Street shall provide a minimum of 50 percent of their required pedestrian circulation space on that #street#. In the case of a #zoning lot# having two full #block# frontages on #wide streets#, this minimum amount may be allocated on either one or both #wide streets#; where each #street# bounding a #zoning lot# with at least one full #block# frontage is a #wide street#, the minimum amount may be allowed on one or more of those #wide streets#.

Where pedestrian circulation space is provided along Seventh Avenue or Broadway between 43rd and 50th Streets, #signs# and marquees shall be permitted as exceptions to the requirements relating to permitted obstructions in Section 37-07 (Requirements for Pedestrian Circulation Space).

Special dimensional requirements for arcades and sidewalk widenings along designated #streets# are set forth in Section 81-43 (Street Wall Continuity Along Designated Streets). In the Theater Subdistrict of the #Special Midtown District#, where a new #building# or #enlarged# portion of an existing #building# provides an arcade, no obstructions, including columns, shall be permitted within such arcade, and the maximum height of such arcade shall be 20 feet and the maximum width shall be 10 feet. Arcades or sidewalk widenings shall not be permitted on 34th Street, 42nd Street, 57th Street or Fifth Avenue frontages or on any #street# frontage within the Preservation Subdistrict. Between 43rd and 50th Streets, no arcades shall be permitted parallel to and along Seventh Avenue or Broadway.

81-451

Design standards for pedestrian circulation spaces  
Theater waiting space

(a) — Sidewalk widening

~~A sidewalk widening is a continuous paved open area along the #front lot line# of a #zoning lot# at the same elevation as the adjoining sidewalk and directly accessible to the public at all times. A sidewalk widening shall be provided on the #wide street# frontage of a #zoning lot# of a new #development# or #enlargement# where all existing #buildings# on the same #block# frontage, whether on the same or another #zoning lot#, provide sidewalk widenings. A sidewalk widening shall meet the following requirements:~~

(1) — Dimensions

~~A sidewalk widening shall have a width of no less than 5 feet nor greater than 10 feet measured perpendicular to the #street line#, and shall be contiguous along its entire length to a sidewalk. Except for the permitted interruptions, as set forth in paragraph (a)(2), a sidewalk widening is permitted on a #narrow street# only if it has a length of at least 100 feet.~~

~~It shall extend along the full length of the #front lot line# except for the portion of the #front lot line# interrupted by an existing #building# which is located at a #side lot line# or, in the case of a full #block# frontage, located at the intersection of two #streets#. A required sidewalk widening on a #wide street# shall connect directly to any existing adjoining sidewalk widening and shall extend the entire length of the new #front lot line#.~~

~~The width of such a required sidewalk widening shall equal that of the existing adjoining sidewalk widening. If there is more than one such existing sidewalk~~

~~widening, the width of such a required sidewalk widening shall equal that of the existing sidewalk widening that is longest.~~

~~A sidewalk widening is permitted on a #wide street# when not adjacent to an existing sidewalk widening only if either the sidewalk widening extends along the #wide street line# for the full length of the #block# front, or the #zoning lot# is a #corner lot# and the sidewalk widening extends along the full length of the #wide street street line# to its intersection with the other #street street line# on which the #zoning lot# fronts.—~~

~~(2) — Permitted interruptions~~

~~Only under the following conditions shall any interruptions of the continuity of a qualifying sidewalk widening be permitted:~~

- ~~(i) — A sidewalk widening may be interrupted by an arcade which has a width equal to or greater than the width of the sidewalk widening and which is directly connected to the sidewalk widening.~~
- ~~(ii) — A sidewalk widening may be overlapped by a corner circulation space or a #building# entrance recess area which permits uninterrupted pedestrian flow.~~
- ~~(iii) — A sidewalk widening may be overlapped by an #urban plaza# as set forth in Section 81-23, provided that the overlapping portion of such #urban plaza# conforms to the design standard of a sidewalk widening.~~
- ~~(iv) — An off street subway entrance may interrupt a sidewalk widening provided such an entrance is located at a #side lot line# or is located at the intersection of two #street lines#.~~
- ~~(v) — A sidewalk widening may be overlapped by the queuing space of a relocated or renovated subway entrance provided that the queuing space for the entrance leaves at least a 5 foot uninterrupted width of sidewalk widening along the entire length of the queuing space.~~
- ~~(vi) — A sidewalk widening may be interrupted by a driveway that is located at a #side lot line#; however, where the #zoning lot# has a through #block# connection, or a through #block urban plaza#, or a through #block# galleria at such a #side lot line#, the location of its driveway is not restricted. The area occupied by the driveway, up to the width of the sidewalk widening, may be counted toward meeting the pedestrian circulation space requirement, provided that there shall be no change of grade within the area of the sidewalk widening.~~

~~(3) — Permitted obstructions~~

~~A sidewalk widening shall be unobstructed from its lowest level to the sky except for those obstructions permitted under paragraph (5) of this Section and for temporary elements of weather protection, such as awnings or canopies, provided that the total area (measured on the plan) of such elements does not exceed 20 percent of the sidewalk widening area, and that such elements and any attachments thereto are at least 8 feet above #curb level#.~~

~~(4) — Specific prohibitions~~

~~No #street# trees are permitted on a sidewalk widening. No vehicle storage, parking or trash storage is permitted on a sidewalk widening. Gratings may not occupy more than 50 percent of the sidewalk widening area nor be wider than one half the width of the sidewalk widening.~~

~~(5) — Special design treatment~~

~~When one end of the sidewalk widening abuts an existing #building# on the #zoning lot# or an existing #building# on the #side lot line# of the adjacent #zoning lot#, design treatment of the termination of the sidewalk widening is required to smooth pedestrian flow. The portion of the sidewalk widening subject to design treatment, hereinafter called the transition area, shall not extend more than 10 feet nor less than 5 feet along the sidewalk widening from its termination.~~

~~The transition area shall receive special design treatment which may include, but is not limited to, landscaping, sculpture, or #building# transparency. The transition area shall be designed to effect a gradual change of the sidewalk widening width to match the #street wall# line of the existing #building# at the sidewalk widening's termination. This may be accomplished by a curved or diagonal edge of paving along a landscaped bed, the use of stepped edges of the #building#, or other architectural treatment of the #building# or paving which avoids an abrupt visual termination of the sidewalk widening. Such special design treatment may be considered a permitted obstruction.~~

~~(b) — Corner circulation space~~

~~A corner circulation space is a small #open space# on the #zoning lot# of a #development# or #enlargement#, adjoining the intersection of two #streets#, at the same elevation as the adjoining sidewalk or sidewalk widening and directly accessible to the public at all times. A corner circulation space shall meet the following requirements:~~

~~(1) — Dimensions~~

~~A corner circulation space shall have a minimum area of 200 square feet, a minimum depth of 15 feet measured along a line bisecting the angle of intersecting #street lines#, and shall extend along both #street lines# for at least 15 feet but not more than 40 feet from the intersection of the two #street lines#.~~

~~(2) — Obstructions~~

~~A corner circulation space shall be completely open to the sky from its lowest level, except for temporary elements of weather protection, such as awnings or canopies; provided that the total area of such elements does not exceed 20 percent of the corner circulation space area; and that such elements and any attachments thereto are at least 8 feet above #curb level#. A corner circulation space shall be clear of all other obstructions including, without limitation, door swings, building columns, #street# trees, planters, vehicle storage, parking or trash storage. No gratings except for drainage are permitted.~~

~~(3) — Building entrances~~

~~Entrances to ground level #uses# are permitted from a corner circulation space. An entrance to a building lobby is permitted from a corner circulation space, provided that the entrance is at no point within 20 feet of the intersection of the two #street lines# that bound the corner circulation space.~~

~~(4) — Permitted overlap~~

~~A corner circulation space may overlap with a sidewalk widening.~~

~~(c) — Arcade~~

~~An arcade is a continuous covered space which adjoins and extends along a #front lot line#, is at the same elevation as the adjoining sidewalk, is open for its entire length to the sidewalk except for columns and is accessible to the public at all times. An arcade shall be provided on the #wide street# frontage of a #zoning lot# of a new #development# or #enlargement# where the #zoning lot# lies directly adjacent to an existing arcade on a #wide street#, except where an existing #building# without an arcade extends along a portion of the #wide street front lot line# of the #zoning lot# containing the new #development# or #enlargement#.~~

~~An arcade shall meet the following requirements:~~

~~(1) — Dimensions~~

~~An arcade with columns shall have a minimum clear width of 10 feet exclusive of all columns and a maximum width of 15 feet inclusive of columns. No column width shall be greater than 5 feet. Columns shall be spaced along the #street# with a minimum clear width between columns of 15 feet. An arcade shall have a clear height of not less than 12 feet.~~

~~(i) — On an #interior lot# or a #through lot# fronting on a #narrow street#, an arcade without columns is permitted only if:~~

~~(a) — it has a continuous unobstructed minimum length of 100 feet or, with the exception of the width of driveways for the required loading berths~~

located at the #side lot line# of the #zoning lot#, the full length of the new #building# frontage, whichever is greater; and

- (b) — the entire #front lot line# shall be unobstructed for the same depth of the arcade, except for that portion of the #front lot line# occupied by an existing #building#.
- (ii) — On an #interior lot# or on a #through lot# fronting on a #narrow street#, an arcade with columns is permitted only if it connects directly to an existing arcade on an adjacent lot matching it in width and alignment and has a continuous, unobstructed minimum length beyond the existing adjacent arcade of at least 100 feet or, with the exception of the width of driveways for the required loading berths located at the #side lot line# of the #zoning lot#, for the full length of the new #building# frontage, whichever is greater.
- (iii) — On the #narrow street# frontage of a #corner lot#, an arcade is permitted only if it extends for the full length of the #street# frontage, with the exception of a driveway for a required loading berth located at the #side lot line# of the #zoning lot#, or if the arcade provides unobstructed pedestrian flow along such entire frontage in combination with one or more of the following other spaces with which it connects at one or both ends: an intersecting #street#, an intersecting sidewalk widening, a corner arcade, a #plaza#, an #urban plaza#, a through #block# connection, a through #block# galleria, a relocated or renovated subway entrance, or an off-street rail mass transit access improvement.
- (iv) — On a #wide street#, an arcade is permitted only if:
  - (a) — the arcade extends along the full length of the #street line# between intersecting #streets#; or
  - (b) — in the case of a #building# that occupies less than the entire #street# frontage between intersecting #streets#, on a full #block# front #zoning lot#, unobstructed pedestrian flow along the entire frontage is provided on the #zoning lot# by the arcade in combination with one or more of the following #open spaces# with which the arcade connects at one or both ends: an intersecting sidewalk widening, a corner circulation space, a #plaza# or an #urban plaza#; or
  - (c) — in the case of a #building# whose #zoning lot# occupies less than the entire #street# frontage between intersecting #streets#, the arcade connects with an existing arcade of matching width and alignment as required in this paragraph (iv)(c), a #plaza# or an #urban plaza# on an adjacent #zoning lot#, so that unobstructed pedestrian flow along the entire #block# front is provided by the arcade in combination with such existing spaces.

(2) — Full #block# front arcade

~~When a #zoning lot# occupies a full #block# front, both ends of the arcade on that #street# frontage shall be open and accessible directly from the sidewalk of the intersecting #street# or any other qualifying pedestrian circulation space.~~

(3) — Permitted obstructions

~~Except for building columns, an arcade shall be completely free from obstructions of any kind.~~

(4) — Specific prohibitions

~~No vehicular driveways, except as permitted under paragraph (c)(1), parking spaces, passenger drop-offs, loading berths or trash storage facilities are permitted within an arcade, nor shall such facilities be permitted immediately adjacent to an arcade.~~

(5) — In the Theater Subdistrict, where a new #building# or #enlarged# portion of an existing #building# provides an arcade, no obstructions, including columns, are permitted within such arcade, and the height and width of such arcade shall be limited to a maximum of 20 feet and 10 feet respectively.

(6) — All existing and new arcades shall maintain a minimum level of illumination of not less than five horizontal foot candles between sunset and sunrise.

(d) — Corner arcade

A corner arcade is a small covered space adjoining the intersection of two #streets# at the same elevation as the adjoining sidewalk or sidewalk widening and directly accessible to the public at all times. — A corner arcade shall meet the following requirements:

(1) — Dimensions

~~A corner arcade shall have the same minimum dimensions as a corner circulation space and in addition shall have a height of not less than 12 feet and shall provide a clear path at least 12 feet wide from one #street line# to another #street line#.~~

(2) — Permitted obstructions

~~Except for building columns a corner arcade shall be free of obstructions of any kind.~~

(3) — Specific prohibitions

~~Same as for an arcade.~~

(4) — Permitted overlap

~~A corner arcade may overlap with an arcade; however, the area of overlap may only be counted once toward the fulfillment of the required minimum area of pedestrian circulation space.~~

~~(e) — Building entrance recess area~~

~~A building entrance recess area is a space which adjoins and is open to a sidewalk or sidewalk widening for its entire length and provides unobstructed access to the building's lobby entrance or to a ground floor #use# entrance. — A building entrance recess area shall meet the following requirements:~~

~~(1) — Dimensions~~

~~A building entrance recess area shall have a minimum length of 15 feet and a maximum length of 50 feet measured parallel to the #street line# at a building's lobby entrance and a maximum length of 30 feet parallel to the #street line# at a ground floor #use# entrance. — It shall have a maximum depth of 15 feet measured from the #street line#, and shall have a minimum depth of 10 feet measured from the #street line#.~~

~~(2) — Obstructions~~

~~Any portion of a building entrance recess area under an overhanging portion of the #building# shall have a minimum clear height of 15 feet. — It shall be free of obstructions except for building columns, between any two of which there shall be a clear space of at least 15 feet measured parallel to the #street line#. — Between a building column and a wall of the #building#, there shall be a clear path at least 5 feet in width.~~

~~(3) — Permitted overlap~~

~~A building entrance recess area may overlap with a sidewalk widening, an arcade, a corner arcade, or a corner circulation space and may adjoin or overlap and connect directly without obstruction to another building entrance recess area except that, on any one #street# frontage, each lobby or ground floor #use# shall connect to only one building entrance recess area.~~

~~(f) — Through #block# connection~~

~~The design standards for a through #block# connection are set forth in Section 81-46 (Through Block Connection).~~

~~(g) — Off street relocation or renovation of a subway stair~~

~~The design standards for a relocated or renovated subway stair are set forth in Section 81-47 (Off-Street Relocation or Renovation of a Subway Stair).~~

~~(h) — Off street improvement of access to rail mass transit Facility~~

~~The design standards for an off street rail mass transit access improvement are set forth in Section 81-49 (Off Street Improvement of Access to Rail Mass Transit Facility).~~

Theater waiting space shall be an unobstructed area providing outdoor waiting space for a theater audience, located immediately adjacent to the sidewalk and to a theater listed in Section 81-742 (Listed theaters) or a new theater designed and intended to show live theatrical performances. Theater waiting space may be located on the same #zoning lot# occupied by a theater or a #zoning lot# immediately adjacent to a theater, and shall meet the following requirements:

- (a) such space shall adjoin and open onto a sidewalk or sidewalk widening for its entire length and shall have a minimum length of 30 feet measured parallel to the #street line# and a minimum clear depth of 10 feet measured perpendicular to the #street line# exclusive of any columns. Its level shall be entirely the same as that of the adjoining sidewalk. When located under an overhanging portion of a #building or other structure#, it shall have a minimum clear height of 15 feet and be free of any obstructions except for building columns;
- (b) such space shall provide direct access to a building's entrance or the theater's lobby. Where the theater and the theater waiting space are on separate #zoning lots#, a plaque shall be provided within the theater waiting space adjacent to the theater stating that the space is available as a waiting area for the theater audience. Such plaque shall be placed between four feet and six feet above #curb level#, and shall be visible from the sidewalk;
- (c) such space shall not adjoin a driveway or an off-#street# loading berth; and
- (d) the entire theater waiting space shall be illuminated with a minimum level of not less than eight horizontal foot-candles (lumens per foot).

The theater waiting space may overlap with an arcade, a building entrance recess area, a corner arcade, a corner circulation space or a sidewalk widening. However, the area of overlap may only be counted once toward the fulfillment of the required minimum area of pedestrian circulation space.

~~81-452~~

~~Bonused amenities qualifying as pedestrian circulation spaces~~

~~A portion of the following amenities, for which bonuses are granted pursuant to this Chapter, may be counted toward the minimum pedestrian circulation space requirements:~~

- ~~(a) Through #block# galleria (see Section 81-748), up to a maximum of 3,000 square feet.~~
- ~~(b) Through #block urban plaza# (see Section 81-23), up to a maximum of 3,000 square feet.~~
- ~~(c) #Urban plaza# (see Section 81-23)~~

(1) ~~For an #urban plaza# that faces a #street# intersection or provides access to a major #building# entrance: 30 percent of the #urban plaza's# area.~~

(2) ~~For other #urban plazas#: the first 10 feet of depth from the #street line#, provided that it conforms to the design standards of a sidewalk widening.~~

(d) ~~Subway station improvement (see Section 81-53), up to a maximum of 3,000 square feet.~~

#### 81-453

##### Exemptions from the pedestrian circulation space requirements

Under any of the following conditions a #development# or #enlargement# shall not be required to provide pedestrian circulation space:

(a) ~~the #zoning lot# is entirely occupied by a #building# of no more than one #story# in height;~~

(b) ~~the #zoning lot# is an #interior lot# fronting on a #wide street# with frontage length less than 80 feet;~~

(c) ~~the #zoning lot# is an #interior# or #through lot# fronting only on a #street# or #streets# where no arcade, sidewalk widening or #urban plaza# is permitted, such as Fifth Avenue, 42nd Street, 34th Street and 57th Street or any #street# within the Preservation Subdistrict;~~

(d) ~~the #zoning lot# is an #interior lot# fronting on either Fifth Avenue, 42nd Street, 34th Street or 57th Street, with another interior frontage of lesser length on any other #street#; or~~

(e) ~~the #zoning lot# is a #through lot# with both frontages less than 25 feet in length.~~

#### 81-454

##### Modification of design standards of pedestrian circulation spaces within existing buildings

The City Planning Commission may authorize a modification of the minimum amount of pedestrian circulation space to be provided on #wide street# frontages as required in Section 81-45 (Provision of Pedestrian Circulation Space) and design standards, as indicated, for the required pedestrian circulation spaces listed below, to be provided within or under an existing #building# to remain on a #zoning lot#.

(a) ~~Arcade: minimum width, minimum height, obstructions, minimum clear width between obstructions, minimum length, column sizes.~~

(b) ~~Corner circulation space or corner arcade: minimum depth, minimum width of clear path, minimum height, obstructions.~~

- (c) ~~Entrance recess area: minimum length, minimum depth from #street line#, minimum height, obstructions, clear space between obstructions and clear space between obstructions and building wall.~~
- (d) ~~Through #block# connection: minimum width of unobstructed path minimum height, #curb level# relationship.~~

The Commission may authorize a modification of the above design standards when the following conditions are met:

- (1) ~~a modification is needed because of the inherent constraints of the existing #building#;~~
- (2) ~~the modification is limited to the minimum needed because of the inherent constraints of the existing #building#; and~~
- (3) ~~the pedestrian circulation space being modified shall be equal in area, and substantially equivalent to the required space in quality, effectiveness and suitability for public use.~~

#### 81-46

##### Through Block Connection

~~A through #block# connection between two parallel or nearly parallel east-west #streets# may be provided for a #development# or #enlargement# on any #through lot# or #through lot# portion of a #corner lot# and may count toward the pedestrian circulation space requirements of Section 81-45 (Provision of Pedestrian Circulation Space) provided that it shall be located at least 150 feet from a north-south #street# and shall meet the standards set forth below in Section 81-461 (Locational standards) and in Section 81-462 (Design standards for a through block connection).~~

#### 81-461

##### Locational standards

- (a) ~~A through #block# connection shall count as pedestrian circulation space meeting the requirements of Section 81-45 (Provision of Pedestrian Circulation Space) only if it is located not less than 150 feet from a north-south #wide street#.~~
- (b) ~~To count as pedestrian circulation space meeting the requirements of Section 81-45 (Provision of Pedestrian Circulation Space), a qualifying through #block# connection shall meet the following additional locational requirements:~~
  - (1) ~~Where the #zoning lot# or a portion thereof is directly across a #street# from and opposite to an existing through #block# connection on an adjacent #block# to the north or south and the existing connection is at least 150 feet from a north-south #wide street#, the alignment of the new through #block# connection shall overlap with that of the existing connection. Such existing connection may also be a through #block#~~

~~galleria, through #block urban plaza# or any through #block# circulation area with a minimum width of 12 feet, which is located within a #building#.~~

- ~~(2) — Where there are already two through #block# connections located on the same #block#, a new through #block# connection shall not count as pedestrian circulation space meeting the requirements of Section 81-45 (Provision of Pedestrian Circulation Space).~~
- ~~(3) — Notwithstanding the provisions of paragraphs (1) and (2) of this Section, no through #block# connection shall be permitted on any portion of a #zoning lot# occupied by a landmark or interior landmark so designated by the Landmarks Preservation Commission or occupied by a #building# whose designation as a landmark or interior landmark has been calendared for public hearing and is pending before the Landmarks Preservation Commission.~~

81-462

#### Design standards for a through block connection

~~A through #block# connection is a paved open or enclosed space providing unobstructed access to the #building's# main lobby and connecting, in a straight continuous unobstructed path, two parallel or nearly parallel #streets#. A through #block# connection shall meet the following requirements:~~

- ~~(a) — A through #block# connection shall provide a straight continuous unobstructed path at least 15 feet wide. If covered, the clear unobstructed height of a through #block# connection shall not be less than 15 feet.~~
- ~~(b) — At no point shall the level of a through #block# connection be more than five feet above or below #curb level#. In all cases, the through #block# connection must provide through its entire length a clear path accessible to the handicapped.~~
- ~~(c) — A through #block# connection may be located inside or outside of a #building#. The area of a through #block# connection located within a #building# shall be counted as #floor area#.~~
- ~~(d) — A through #block# connection located partially or wholly within a #building# shall adjoin and connect directly to the #building's# main lobby via unobstructed openings with an aggregate width exceeding that of any other entrances to the lobby.~~
- ~~(e) — A through #block# connection located wholly or partially outside a #building# shall provide unobstructed access directly to the #building's# main lobby through the major entrance. For the purposes of this Section, the major entrance shall be that entrance to the main lobby which has the greatest aggregate width of clear openings for access.~~
- ~~(f) — Any portion of a through #block# connection located outside a #building# shall be illuminated throughout with a minimum level of illumination of not less than five horizontal foot candles (lumens per candle). Such illumination shall be maintained throughout the hours of darkness.~~

~~(g) — A through #block# connection shall at a minimum be accessible to the public from 8:00 a.m. to 7:00 p.m. on the days the #building# or #development# is open for business and shall have posted in prominent, visible locations at its entrances signs meeting the standards set forth in paragraph (h) of this Section.~~

~~(h) — A through #block# connection shall provide the following information for public access at each public entry to the through #block# connection:~~

~~(1) — For an unenclosed through #block# connection, the public access information shall be an entry plaque located at the entrance to the through #block# connection at each #street# frontage. The entry plaque shall contain:~~

~~(i) — a public space symbol which is at least 14 inches square in dimension; has a white background; has a grid of four straight lines no greater than one eighth inch wide and green in color; and has a tree shaped symbol as shown:~~

~~(Tree Symbol)~~

~~(ii) — lettering at least two inches in height stating "OPEN TO PUBLIC." This lettering shall be located within nine inches of the public space symbol; and~~

~~(iii) — an international Symbol of Access for the physically handicapped at least three inches square.~~

~~The entry plaque shall be mounted with its center five feet above the elevation of the nearest walkable pavement on a wall or a permanent free standing post. It shall be placed so that the entire entry plaque is obvious and directly visible without any obstruction, along every line of sight from all paths of pedestrian access to the through #block# connection, in a position that clearly identifies the entry to the connection.~~

~~(2) — For an enclosed through #block# connection or a portion thereof:~~

~~(i) — a public space symbol as described in paragraph (h)(1)(i) of this Section, not less than six inches square, shall be mounted with its center five feet above the elevation of the nearest walkable pavement;~~

~~(ii) — lettering stating "PUBLIC ACCESS TO \_\_\_\_\_ STREET," indicating the opposite #street# to which the through #block# connection passes. This lettering shall not be less than three inches in height and located not more than three inches away from the public space symbol and~~

~~(iii) — lettering not more than two inches or less than one and a half inches in height stating "OPEN TO PUBLIC" with the hours and days of operation of the through #block# connection. This lettering shall be located not more than three inches from the public space symbol.~~

~~The above required information shall be permanently affixed on the glass panel of the entry doors of the through #block# connection clearly facing the direction of pedestrian flow; the information shall be located not higher than six feet or lower than three feet above the level of the pedestrian path at the entry, and shall be in a format and color which will ensure legibility.~~

#### 81-4781-46

##### Off-Street Relocation or Renovation of a Subway Stair

~~Where a #development# or #enlargement# is constructed on a #zoning lot# which fronts on a sidewalk containing a stairway entrance or entrances into a subway and such #zoning lot# contains 5,000 square feet or more of #lot area#, the existing entrance or entrances shall be relocated from the #street# onto the #zoning lot#. The new entrance or entrances shall be provided in accordance with the provisions of Sections 81-471 (Standards for location and design) and 81-473 (Administrative procedure for subway stair relocation or renovation).~~

~~Where a #development# or #enlargement# is constructed on a #zoning lot# containing an existing stairway entrance or entrances into a subway and such entrance or entrances are renovated or reconstructed in accordance with the provisions of Sections 81-471 and 81-473, such entrance or entrances may count as pedestrian circulation space as set forth in Section 81-472 (Relocated or renovated subway stair as pedestrian circulation space).~~

#### 81-471

##### Standards for location and design

###### (a) — Location

~~The relocated or renovated entrance shall be immediately adjacent to, and accessible without any obstruction from a public sidewalk or at least one of the following public spaces, which shall have a minimum horizontal dimension equal to the width of the relocated stairs:~~

<del>sidewalk widening</del>	<del>(Section 81-45)</del>
<del>corner circulation space</del>	<del>(Section 81-45)</del>
<del>arcade</del>	<del>(Section 81-45)</del>
<del>corner arcade</del>	<del>(Section 81-45)</del>
<del>building entrance recess area</del>	<del>(Section 81-45)</del>
<del>#urban plaza#</del>	<del>(Section 81-23)</del>

~~The relocated or renovated entrance may be provided within a #building# but shall not be enclosed by any doors. The area occupied by a relocated or renovated entrance within a #building# shall not be counted toward the #floor area# of the #development# or #enlargement#.~~

(b) ~~Design standards~~

~~The following standards are taken from the current New York City Transit Authority's station planning guidelines.~~

~~The relocated or renovated entrance shall have a stair width of at least eight feet for each run.~~

~~No stairway shall have more than 14 risers without a landing, and each landing shall have a minimum width equal to the width of the stairs, and a minimum length of 5 feet.~~

~~Throughout the entire stairway entrance, including passageways, the minimum clear, unobstructed height shall be at least 7 feet 6 inches from finished floor to finished ceiling, including all lighting fixtures and #signs#.~~

~~The relocated or renovated stairway entrance shall meet Transit Authority standards and requirements for all of the following: riser and tread relationships, handrails, passageways, ramps, lighting, finish material, ventilation, information signage, and (where provided) weather protection.~~

~~In addition and for a relocated entrance only, the relocated entrance shall have a queuing space at the top and bottom of the stairs at least 8 feet wide and 15 feet long. Such queuing space may overlap with a sidewalk widening, or an arcade, or an #urban plaza#.~~

~~Where two or more existing stairway entrances are being relocated and/or renovated as part of the same #development#, the new entrance or entrances shall have total stair widths whose sum is equal to or greater than the sum of the stair widths of those existing stairway entrances. The entire entrance area, including passageways, shall be free of obstructions of any kind, except for projecting information signage.~~

~~The relocated or renovated entrance may be located within an #urban plaza#, provided that the minimum width of the stairs is 10 feet and the queuing area required for a relocated entrance is unobstructed and contiguous to a sidewalk or a sidewalk widening. A relocated or renovated entrance within an #urban plaza# is a permitted obstruction, but shall not be subject to the percentage limit on permitted obstructions for an #urban plaza#.~~

~~The relocated or renovated entrance shall connect to an existing or proposed subway passageway or shall connect, via an underground passageway, to a mezzanine area of the subway station.~~

~~The below grade portion of a relocated or renovated entrance may be constructed within the #street#.~~

~~These standards may be modified or waived by the City Planning Commission upon a finding that their enforcement would not contribute to good site planning.~~

(c) ~~Hours of public accessibility~~

The relocated or renovated entrance shall be accessible to the public during the hours when the connected mezzanine area is open to the public or as otherwise approved by the Transit Authority.

81-472

Relocated or renovated subway stair as a pedestrian circulation space

One and a half times the area, measured at #street# level, of either of the following types of subway stair entrances may count toward meeting the pedestrian circulation space requirements of Section 81-45 (Provision of Pedestrian Circulation Space):

- (a) — a new relocated subway entrance; or
- (b) — an existing subway stair entrance which is contained within the #zoning lot# and has been renovated or reconstructed so that it meets all of the requirements and standards set forth in Sections 81-471 (Standards for location and design) and 81-473 (Administrative procedure for subway stair relocation or renovation).

81-473

Administrative procedure for subway stair relocation or renovation

(a) — Except as otherwise provided in paragraph (b) of this Section, no plan shall be approved by the Department of Buildings and no excavation permit or building permit shall be issued for any #development# or #enlargement# which is subject to the requirements for the relocation of a subway stair entrance or counts a renovated or reconstructed subway stair as pedestrian circulation space, unless:

(1) — for a relocated entrance, such plan includes a stair relocation plan and related documents which bind the developer to:

- (i) — construct the new stair entrance in accordance with such plan;
- (ii) — demolish above ground elements of the existing entrance;
- (iii) — seal the existing entrance at the sidewalk level; and
- (iv) — maintain the work performed on the stair.

For a renovated or reconstructed entrance, such plan includes a renovation or reconstruction plan and related documents which bind the developer to:

- (i) — renovate or reconstruct the entrance in accordance with such plan; and
- (ii) — maintain the work performed on the entrance.

(2) — Such plan and related documents bear the Transit Authority's approval.

- (3) ~~Such plan is accompanied by a certified copy of an agreement, as recorded, between the Transit Authority and the owner for an easement on the #zoning lot# for subway-related use of the new stair entrance and for public access via such entrance to the subway station, which agreement has been recorded against the #zoning lot# in the Office of the Register of the City of New York (County of New York) and is accompanied by the Register's receipt of recordation.~~
- (b) ~~For a relocated entrance only, in the event that major construction problems render the stair-relocation infeasible or that operating design considerations make it undesirable, the Transit Authority and the City Planning Commission by joint certification may release the developer from the requirement. In such event, the stair relocation requirement shall be satisfied by retention of the existing stair and provision on the #zoning lot# of a pedestrian circulation space qualifying under the provisions of Section 81-45 (Provisions of Pedestrian Circulation Space) and which accommodates pedestrian traffic passing the existing stair entrance. Such space shall have a width equal to at least one and one half times the width of the existing stair entrance and shall extend along the full length of the stair entrance.~~
- (c) ~~No certificate of occupancy shall be issued for any #development# or #enlargement# subject to the subway stair relocation requirement or counting a renovated or reconstructed subway stair as pedestrian circulation space unless and until all of the work required under paragraph (a)(1) of this Section has been completed and the Transit Authority has so certified in writing to the Department of Buildings.~~

Where a #development# or #enlargement# is constructed on a #zoning lot# that contains at least 5,000 square feet of #lot area# and fronts on a sidewalk containing a stairway entrance or entrances into a subway station, the existing entrance or entrances shall be relocated from the #street# onto the #zoning lot#. The new entrance or entrances shall be provided in accordance with the provisions of Section 37-03 (Off-Street Relocation or Renovation of a Subway Stair). A relocated or renovated subway stair may be counted as pedestrian circulation space in accordance with the provisions of Section 37-07 (Requirements for Pedestrian Circulation Space).

The subway stations where such improvements are required are listed in the following table and shown on Map 3 (Subway Station Improvement Areas) in Appendix A.

Station	Line
34th St-Penn Station	IRT (7 <sup>th</sup> Ave)
34th St-Herald Square	BMT-IND (6 <sup>th</sup> Ave)
42nd St	IND (8 <sup>th</sup> Ave)
42nd St-Times Square	BMT/IRT (7 <sup>th</sup> Ave)
42nd St	IND (6 <sup>th</sup> Ave)
42nd St-Grand Central	IRT (Lexington Ave)
47th-50th St. (Rockefeller Center)	IND (6 <sup>th</sup> Ave)
49th St (7 <sup>th</sup> Ave)	BMT
50th St	IND (Eighth Ave)
50th St	IRT (7 <sup>th</sup> Ave-Bway)

51st St	IRT (Lexington Ave)
53rd St (7 <sup>th</sup> Ave)	IND (8 <sup>th</sup> Ave)
Fifth Ave (53rd St)	IND (Queens)
Lexington Ave-Third Ave (53rd St)	IND (Queens)
57th St (7 <sup>th</sup> Ave)	BMT
57th St (6 <sup>th</sup> Ave)	IND
Columbus Circle (59th St)	IND (8 <sup>th</sup> Ave)-IRT (7 <sup>th</sup> Ave)

~~81-48~~81-47

Major Building Entrances

\* \* \*

~~81-49~~81-48

Off-street Improvement of Access to Rail Mass Transit Facility

\* \* \*

81-50

INCENTIVES BY SPECIAL PERMIT FOR PROVISIONS OF PUBLIC AMENITIES

~~81-51~~

~~General Provisions and Procedures~~

~~Except in the Preservation Subdistrict and except for #zoning lots# wholly contained within the Theater Subdistrict Core, as defined in Section 81-71 (General Provisions), the City Planning Commission, by special permit after public notice and hearing and subject to Board of Estimate action, may grant special permits authorizing, for non-#residential# or #mixed buildings#, #floor area# bonuses in accordance with the provisions of Section 81-53 (Subway Station Improvements).— However, in the Theater Subdistrict, no special permit shall be issued pursuant to the provisions of Section 81-53 without prior certification by the City Planning Commission that either:~~

- ~~(a) — there is not available to the applicant any feasible alternative involving the preservation or rehabilitation of an existing theater for which bonus #floor area# may be authorized by special permit or certification; or~~
- ~~(b) — the amenity for which the special permit is requested, because of its importance to the surrounding area, has priority over any feasible alternative involving the preservation or rehabilitation of an existing theater.~~

~~The total additional #floor area# permitted on the #zoning lot# by such special permit shall in no event exceed the amount permitted in the underlying district by the provisions of Section 81-211 (Maximum floor area ratio for non-residential or mixed buildings).~~

Within the #Special Midtown District#, certain special permit provisions of Article VII, Chapters 3,4, 8 and 9 are inapplicable or subject to modification, as set forth in Section 81-60 (APPLICABILITY OF ARTICLE VII PROVISIONS).

Failure to comply with the conditions or restrictions of the bonused amenity shall constitute a violation of this Resolution and shall constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies.

81-53

Subway Station Improvements

The City Planning Commission by special permit after public notice and hearing and subject to Board of Estimate action, may grant #floor area# bonuses and waive or modify #street wall# continuity provisions for #developments# or #enlargements# which provide major improvements for adjacent subway stations in accordance with the provisions of this Section. The subway stations where such improvements may be constructed are listed in Section 81-531 (Midtown subway stations) and located as shown on Map 3 (Subway Station Improvement Areas) in Appendix A. The #zoning lot# for the #development# or #enlargement# on which such a #floor area# bonus is requested shall be adjacent to the subway station for which the improvement is proposed.

In order for the #zoning lot# of the #development# or #enlargement# to qualify as "adjacent," upon completion of the improvement it must physically adjoin a station mezzanine, platform, concourse or connecting passageway.

81-531

Midtown subway stations

59th Street Eighth Ave Columbus Circle	IRT IND	
50th Street Eighth Avenue		IND
42nd Street Eighth Avenue		IND
34th Street Seventh Ave Penn Station	IRT	
42nd Street Times Square	BMT IRT IRT (Flushing)	
50th Street Broadway		IRT
49th Street Seventh Avenue	BMT	
57th Street Seventh Avenue	BMT	
34th Street Sixth Avenue Herald Square	BMT IND	
42nd Street Sixth Avenue Fifth Avenue	IND IRT (Flushing)	
47th 50th Streets Sixth Avenue	IND	
57th Street Sixth Avenue		IND
53rd Street Seventh Avenue	IND	
53rd Street Fifth Avenue Madison Ave	IND	
53rd Street Lexington Avenue Third Ave	IND	
42nd Street Grand Central Terminal	IRT IRT (Flushing)	
51st Street Lexington Avenue	IRT	

81-532

Selection of improvements

The selection of improvements shall be on a case-by-case basis and shall be subject to the approval of the Metropolitan Transportation Authority, the New York City Transit Authority, and the City Planning Commission.

81-533

Compliance with Transit Authority design standards

The subway station improvement shall comply with all applicable design standards of the current station planning guidelines of the Transit Authority.

81-534

Procedure

(a) — Pre-application

The applicant shall submit schematic or concept plans for the proposed improvement to the MTA, Transit Authority and the Commission.

(b) — Application — Pre-certification

After review and agreement on concept by the Metropolitan Transit Authority (MTA), the New York City Transit Authority and the New York City planning Commission, the applicant shall submit documentation deemed necessary by the reviewing agencies. Prior to certification by the Commission, the Transit Authority and the MTA shall each provide a letter to the Commission containing a conceptual approval of the improvement and a statement of any special considerations regarding the Transit Authority's future operation of the improvement.

(c) — The special permit application to the Commission shall include information and justification sufficient to provide the Commission with a basis for evaluating the benefits to the City from the proposed improvement and determining the appropriate amount of bonus #floor area# and, where applicable, assessing the advantages and disadvantages of waiving or modifying the #street wall# continuity provisions of Section 81-43 (Street Wall Continuity along Designated Streets).

(d) — Uniform Land Use Review Procedure — Certification

The Commission shall not certify an application under the Uniform Land Use Review Procedure (ULURP) until the requisite letters from the Transit Authority and the MTA have been received and are incorporated in the application. Such letters may be subject to subsequent execution of a final agreement with the developer.

(e) — Prior to the granting of a special permit the Transit Authority shall have submitted a letter to the Commission:

- (1) ~~stating that the drawings and other documents submitted by the applicant have been determined by the Transit Authority to be of sufficient scope and detail to fix and describe the size and character of the subway improvement as to architectural, structural, mechanical and electrical systems; materials; relationship to existing site conditions; and such other conditions as may be appropriate; and~~
- (2) ~~confirming that the construction of the subway improvement in accordance with such submission is feasible.~~

~~The applicant shall sign a legally enforceable instrument running with the land containing complete drawings of the improvement and setting forth the obligations of owner and developer, their successors and assigns, to construct and maintain the improvement, establish a construction schedule and provide a performance bond for completion of the improvement.~~

- (f) ~~Any instrument creating a transit easement on the #zoning lot# shall be recorded against the #zoning lot# in the Office of the Register of the City of New York for New York County and a certified copy of the instrument shall be submitted to the Commission and the Transit Authority. The applicant shall not apply for nor accept a temporary certificate of occupancy for the bonus #floor area#, and the Department of Buildings shall not issue such a temporary certificate of occupancy, until the Transit Authority has determined that the bonused subway improvement is substantially complete which shall, for this purpose, mean usable by the public.~~
- (g) ~~The applicant shall not apply for or accept a permanent certificate of occupancy for the #development# or #enlargement#, nor shall the Department of Buildings issue such permanent certificate of occupancy until the bonused subway improvement has been completed in accordance with the approved plans and such completion has been certified by the Transit Authority.~~

81-535

Floor area bonus

- (a) ~~The amount of the #floor area# bonus shall be at the discretion of the City Planning Commission and may range from no bonus #floor area# to the maximum amount allowable by special permit, as set forth in Section 81-211 (Maximum floor area ratios for non-residential or mixed buildings). In determining the precise amount of #floor area# bonus, the Commission shall make findings on the following:~~
  - (1) ~~the degree to which the station's general accessibility and security will be improved by the provision of new connections, additions to or reconfigurations of circulation space, including provision of escalators or elevators; and~~
  - (2) ~~significant improvements to the station's environment by provision for direct daylight access, or improvements to noise control, air quality, lighting or rider orientation and satisfactory integration of the #street# level entryway into the #development# or #enlargement#.~~

(b) ~~No bonus #floor area# shall be granted for any #development# or #enlargement# located on a #zoning lot# wholly contained within the Theater Subdistrict Core, as defined in Section 81-71 (General Provisions).~~

(c) ~~For a #development# or #enlargement# located on a #zoning lot# divided by a boundary of the Theater Subdistrict Core, as defined in Section 81-71, the amount of bonus #floor area# granted shall be subject to the provisions of paragraph (a) of this Section, but shall not exceed the amount of #floor area# derived from applying the maximum bonus #floor area# allowance as set forth in Section 81-211 (Maximum floor area ratios for non-residential or mixed-buildings) over the sum of:~~

(1) ~~the area of the #zoning lot# which is outside of the Theater Subdistrict Core; and~~

(2) ~~an area of the #zoning lot# within the Theater Subdistrict Core, not exceeding the area in paragraph (c)(1) of this Section.~~

~~If the basic maximum #floor area ratio# as set forth in Section 81-211 (Maximum floor area ratios for non-residential or mixed buildings) is the same for both the portion of the #zoning lot# within the Core and the portion outside of the Core, such bonus #floor area# must be utilized on the #zoning lot# in accordance with the provisions of paragraph (b) of Section 81-746 (Additional provisions for zoning lots divided by district or subdistrict core boundaries).~~

#### 81-536

##### Waiver or modification of street wall continuity provisions

~~As a condition for waiving or modifying the #street wall# continuity provisions of Section 81-43 (Street Wall Continuity along Designated Streets), the Commission shall find that the waiver or modifications will permit the proposed design to provide for access of daylight and air to the subway platform, mezzanine or concourse and that the advantages of such access outweigh the disadvantages incurred by the interruption of #street wall# continuity and retail continuity.~~

~~The Commission in granting such waiver or modification shall specify the depth of the setback permitted and the amount by which the required length of #street wall# subject to setback restrictions is reduced.~~

#### 81-51

##### General Provisions and Procedures

The City Planning Commission may grant special permits authorizing, for non-#residential# or #mixed buildings#, #floor area# bonuses in accordance with the provisions of this Section.

#### 81-511

##### Subway station improvements

Except in the Preservation Subdistrict and except for #zoning lots# wholly within the Theater Subdistrict Core, as defined in Section 81-71 (General Provisions), the City Planning Commission may

grant special permits authorizing, for non-residential or mixed buildings, floor area bonuses and may modify or waive the provisions of Section 81-43 (Street Wall Continuity Along Designated Streets) in accordance with the provisions of Section 74-634 (Subway station improvements in commercial zones of 10 FAR and above in Manhattan).

The subway stations where such improvements are permitted are listed in the following table and shown on Map 3 (Subway Station Improvement Areas) in Appendix A.

MIDTOWN SUBWAY STATIONS

34th St./Penn Station	IRT (Seventh Ave.)
34th St./Herald Square	BMT/ IND (Sixth Ave.)
42nd St.	IND (Eighth Ave.)
42nd St./Times Square	BMT/IRT (Seventh Ave.)
42nd St.	IND (Sixth Ave.)
42nd St./Grand Central	IRT (Lexington Ave.)
47th-50th St.. (Rockefeller Center)	IND (Sixth Ave.)
49th St. (Seventh Ave.)	BMT
50th St.	IND (Eighth Ave.)
50th St.	IRT (Seventh Ave./Broadway)
51st St.	IRT (Lexington Ave.)
53rd St. (Seventh Ave.)	IND (Eighth Ave.)
Fifth Ave. (53rd St.)	IND (Queens)
Lexington Ave./Third Ave. (53rd St.)	IND (Queens)
57th St. (Seventh Ave.)	BMT
57th St. (Sixth Ave.)	IND
Columbus Circle (59th St.)	IND (Eighth Ave.)/IRT (Seventh Ave.)

\* \* \*

81-60

SPECIAL REGULATIONS FOR THE GRAND CENTRAL SUBDISTRICT

\* \* \*

81-623

Building lobby entrance requirements

\* \* \*

Each required building entrance shall lead directly to the building lobby. For developments or enlargements on through lots, required building entrances on each such street frontage shall be connected directly to the building lobby by providing a through block connection pursuant to ~~Section 81-462 (Design standards for a through block connection).~~ paragraph (h)(2) of Section 37-073 (Design standards for pedestrian circulation spaces). The required through block connection shall be considered as pedestrian circulation space, meeting the requirements of Section 81-45 (~~Provision of~~

Pedestrian Circulation Space), if it is more than 50 feet from the nearest north/south #street# or Depew Place.

Each required building entrance shall include a building entrance recess area as defined in Section 81-451 (Design standards for pedestrian circulation spaces), in accordance with the requirements for building entrance recess areas set forth in paragraph (b) of Section 37-073, except that for #developments# or #enlargements# with frontage on Madison or Lexington Avenues or 42nd Street, the length of a building entrance recess shall not be greater than 40 feet parallel to the #street line# and there may be only one building entrance recess area on each such #street# frontage.

\* \* \*

#### 81-625

##### Pedestrian circulation space requirements

Any #development# or #enlargement# within the Grand Central Subdistrict shall be subject to the provisions of Sections 81-45 (Provision of Pedestrian Circulation Space), ~~Section 81-476~~ (Off-Street Relocation or Renovation of a Subway Stair) and ~~Section 81-498~~ (Off-Street Improvement of Access to Rail Mass Transit Facility), except that:

- (a) no arcade shall be allowed for any #development# or #enlargement# within the Subdistrict; and
- (b) within the Subdistrict, a sidewalk widening may be provided only for a #development# or #enlargement# occupying an Avenue frontage, provided that such sidewalk widening extends for the length of the full #block# front.

\* \* \*

#### 81-70

##### SPECIAL REGULATIONS FOR THEATER SUBDISTRICT

#### 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, and in of which the Theater Subdistrict Core and the Eighth Avenue Corridor are parts. ~~The Theater Subdistrict extends from 40th Street to 57th Street and from Avenue of the Americas to Eighth Avenue. The Theater Subdistrict Core extends from 43rd Street to 50th Street and from a line 200 feet west of Avenue of the Americas to a line 100 feet east of Eighth Avenue.~~

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).

~~Their~~ 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, ~~and the Core~~ are is a parts-.

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.

~~The Mayor of the City of New York shall appoint a Theater Advisory Council (the Council) and name a chairperson. Other members of the Council shall include representatives of the performing arts, the theatrical industry and related professions. The Council shall advise the City Planning Commission concerning applications for special permits or certifications pursuant to Section 81-74.~~

The City of New York acting through the Mayor shall designate a Theater Subdistrict Council comprised of representatives of the performing arts, the theatrical industry and related professions, and which shall include government representatives including representatives of the Manhattan Borough President, City Council Speaker and Mayor, community board representatives, and representatives of Business Improvement Districts and economic development projects active within the Theater Subdistrict. The Theater Subdistrict Council shall be a not-for-profit organization whose organizational purpose shall be limited solely to promoting theater and theater-related use and preservation within the Theater Subdistrict and promoting the welfare of the Theater Subdistrict generally. The goals of the Theater Subdistrict Council shall include enhancing the long-term viability of Broadway by facilitating the production of plays and small musicals within the Theater Subdistrict,

developing new audiences for all types of theatrical productions, and monitoring preservation and use covenants in Broadway's listed theaters. The Theater Subdistrict Council shall advise the Chairperson of the City Planning Commission concerning applications for any special permit or certification pursuant to the special regulations for the Theater Subdistrict and shall be the holder and administrator of the funds received in connection with transfers of development rights from listed theaters pursuant to Section 81-744 (Transfer of development rights from listed theaters) in accordance with the provisions for the Theater Subdistrict Fund set forth in paragraph (h) of Section 81-741 (General Provisions).

~~Applications shall be referred by the Commission to the Council for an advisory report prior to certification for ULURP (Uniform Land Use Review Procedure) review. Such advisory report shall assist the Commission in evaluating each special permit application and in making each of the required findings therein concerning demolition pursuant to Section 81-742 or the #floor area# bonus pursuant to Sections 81-744 or 81-745. In all special permits or certifications involving the preservation or rehabilitation of existing theaters, the Council shall advise the Commission on the adequacy of the assurances required by Section 81-743 for continuance of legitimate theater #use#.~~

81-72

Use Regulations Modified

Within that portion of the Theater Subdistrict bounded by West 40th Street, a line 100 feet east of Eighth Avenue, West 51st Street and a line 200 feet west of Avenue of the Americas, #uses# which are created by #development#, or which are #enlarged# or #extended#, shall be subject to the provisions of this Section.

\* \* \*

81-721

Required use allocations on street frontages

\* \* \*

~~Where a stairway entrance into a subway is relocated onto a #zoning lot# in accordance with the requirements of Section 81-47 pursuant to Section 81-46 (Off-Street Relocation of a Subway Stair), up to, but not more than, 40 feet of the #narrow street front lot line# ground level frontage occupied by that stairway may be excluded from the length of #narrow street# frontage to which the above requirements apply.~~

\* \* \*

81-723

Special ground floor street frontage restrictions

No single establishment shall have a #wide street front lot line# ground level frontage of less than 10 feet. ~~or, except in the case of theaters, greater than 40 feet.~~

\* \* \*

81-724

Requirements for entertainment-related uses

With the exception of a #development# or #enlargement# in which more than 50 percent of the new #floor area# is allocated to #transient hotel use#, a #development# or #enlargement# on a #zoning lot# with more than 50 percent of its #zoning lot# area located within the Theater Subdistrict Core shall meet the following requirements:

- (a) If the new #floor area# of the #development# or #enlargement# generated by that portion of the #zoning lot# located within the Theater Subdistrict Core exceeds 60,000 square feet, an amount of floor space on the #zoning lot# equal to five percent of the amount by which the new #floor area# generated by that portion of the #zoning lot# located within the Theater Subdistrict Core exceeds 50,000 square feet shall be allocated to #uses# listed in Section 81-725 (Entertainment-related uses) or #front lot line# ground level #uses# designated thus (\*\*\*) in Section 81-722 (Use Group T) as satisfying the requirements of this Section.

Except as provided below, the amount of floor space specified shall be located on the same #zoning lot# as the #development# or #enlargement# for which that floor space is provided to meet the requirements of this Section.

- (b) Alternatively, ~~by authorization of the City Planning Commission,~~ a maximum of 75 percent of the amount of floor space specified ~~above~~ in paragraph (a) of this Section may be located on a separate #zoning lot#, with the remainder located on the same #zoning lot# as the #development# or #enlargement#, by authorization of the City Planning Commission provided, upon examination of proposed plans, the Commission finds that:
- (1) either of the following conditions exist:
    - (i) more than 50 percent of the area of the separate #zoning lot# is located within the Theater Subdistrict Core; or
    - (ii) the ~~portion of~~ floor space located on the separate #zoning lot# is allocated in its entirety to studios; (music, dancing or theatrical), as listed in Section 81-725 (Entertainment-related uses), and the separate #zoning lot# is located within the Theater Subdistrict;
  - (2) the ~~portion of~~ floor space located on the separate #zoning lot# is ~~provided separately from and~~ in addition to any floor space provided to meet the requirements of this Section for any other #development# or #enlargement#;
  - (3) the ~~portion of~~ floor space located on the separate #zoning lot# is constructed or renovated specifically for the purpose of meeting the requirements of this Section and

has not been utilized for any of the #uses# listed in Section 81-725  
(~~Entertainment related uses~~) at any time during the ~~period~~ of two years period  
immediately prior to the date on which authorization described in this ~~paragraph (a)~~  
Section is granted; and

- (4) the #use# located on the separate #zoning lot# ~~maintains~~ achieves a reasonable distribution of entertainment-related #uses# and locations of such #uses#.

\* \* \*

#### 81-731

Special regulations for signs, transparency, banners and canopies

\* \* \*

- (a) At least 50 percent of the #street wall# surface of a #development# shall be glazed at the ground floor level with clear, untinted, transparent material and not more than 50 percent of such transparent surface shall be painted or obstructed with #signs#.

For the purpose of the glazing requirements, the #building's street wall# surface at the ground floor level shall be measured from the floor to the height of the ceiling or 14 feet above grade, whichever is less, and shall exclude any area of #street wall# occupied by #accessory# off-street loading berths or #accessory# off-street parking required under provisions of Section 81-30 (Off-Street Parking and Off-Street Loading Regulations). For the purposes of this Section, clear, unobstructed openings in the surface of a #street wall# provided for a stairway entrance into a subway relocated onto a #zoning lot# in accordance with the requirements of Section ~~81-47~~ 81-46 (Off-Street Relocation or Renovation of a Subway Stair) or a through #block# connection provided in accordance with the requirements of paragraph (h) of Section 81-46 (Through Block Connection) 37-073 (Design standards for pedestrian circulation spaces) shall be treated as transparent glazed surfaces.

\* \* \*

#### 81-74

Special Incentives and Controls in the Theater Subdistrict

#### 81-741

General provisions

- (a) ~~Special permits by the City Planning Commission~~

~~In the Theater Subdistrict, the City Planning Commission, after public notice and hearing and subject to Board of Estimate action, may grant special permits:~~

- (1) ~~authorizing #floor area# bonuses for rehabilitation of existing theaters in accordance with the provisions of Section 81-745;~~

~~(2) authorizing transfer of development rights from #zoning lots# occupied by theaters which are designated landmarks in accordance with the provisions of Section 81-747; and~~

~~(3) authorizing demolition of theaters where permissible under the provisions of Section 81-742.~~

~~(b) Certification by the Chairperson of the City Planning Commission~~

~~By certification of the Chairperson of the City Planning Commission:~~

~~(1) bonus #floor area# may be authorized for the retention of any eligible existing listed theater in accordance with the provisions of Section 81-744 (Floor area bonus for retention of certain existing listed theaters);~~

~~(2) the Special Provisions for Zoning Lots Divided by District Boundaries (Article VII, Chapter 7) may be modified in the case of a #zoning lot# partly occupied by a listed theater in accordance with the provisions of Section 81-746 (Modification of special provisions for zoning lots divided by district boundaries); or~~

~~(3) bonus #floor area# may be authorized for a through #block# galleria in accordance with the provisions of Section 81-748 (Floor area bonus for through block gallerias).~~

(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) 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 (Transfer of development rights from listed theaters);

- (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);
- (4) transfer of development rights from a #zoning lots# 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).

(c) Additional floor area bonuses

All #developments# located on the west side of Eighth Avenue between 42nd and 45th Streets within the Theater Subdistrict may receive an increase in #floor area# pursuant to Section 96-21 (Floor Area Increase) for those #developments# complying with the provisions of Section 23-90 (INCLUSIONARY HOUSING).

~~(e)~~(d) Required assurances

All ~~such authorizations by special permits, authorizations or certifications and~~ involving preservation of existing theaters shall be subject to the provisions of Section 81-743 (Required assurances for continuance of legitimate theater use).

~~(d)~~(e) Limits on total additional #floor area#

Except as otherwise provided in Section 81-212 (Special provisions for transfer of development rights from landmark sites), the total additional #floor area# permitted on the #zoning lot# by such special permit, authorization or certification, together with all bonus #floor area# or #floor area# derived from transferred development rights under other provisions of this Chapter, shall in no event exceed the maximum amount permitted by certification, authorization or special permit as set forth in Section 81-211 (Maximum floor area ratio for non-residential or mixed buildings).

~~(e)~~(f) Limitations on non-theater-related bonuses in C6-4, C6-5 or M1-6 Districts

For #zoning lots# or portions thereof in C6-4, C6-5 or M1-6 Districts, the total amount of #floor area# derived from non-theater-related bonuses or other special #floor area# allowances, pursuant to provisions of this Chapter other than those in Sections 81-744, 81-745, 81-746 or 81-747, ~~relating to the preservation of existing theaters~~ shall not exceed a #floor area ratio# of 2.0.

~~(f)~~(g) Theater-related bonus #floor area# for #residences# in C6-4 and C6-5 Districts

For #zoning lots# or portions thereof in C6-4 or C6-5 Districts, some or all of the bonus #floor area# or other special #floor area# allowances permitted pursuant to the provisions of Sections

81-744, 81-745, 81-746 or 81-747, relating to the preservation or rehabilitation of existing theaters, may be allocated to a #residential building# or the #residential# portion of a #mixed building#, provided that the total #residential floor area ratio# with such #floor area# allowances shall not exceed 12.0.

(h) Theater Subdistrict Fund

In furtherance of the purposes of this Section, the Theater Subdistrict Council shall establish a separate interest-bearing account (the "Theater Subdistrict Fund" or "Fund") for the deposit and administration of the revenues received by the Theater Subdistrict Council generated by the transfer of development rights pursuant to Section 81-744 (Transfer of development rights from listed theaters). Upon receipt of any revenue generated pursuant to such Section, the Theater Subdistrict Council shall notify the Comptroller and the Department of City Planning, and promptly deposit such revenues into the Theater Subdistrict Fund and shall expend such revenues and any interest accumulated thereon in the following manner:

- (i) a portion of any such revenues shall be reserved, sufficient in the judgment of the Theater Subdistrict Council but in no event less than 20 percent of such revenues, to undertake the ongoing periodic inspection and maintenance report requirements pursuant to paragraph (c) of Section 81-743.
- (ii) the remainder of such revenue shall be used for activities chosen by the Theater Subdistrict Council furthering the objectives and purposes of this Section, which activities may include judicial or administrative proceedings instituted by the Theater Subdistrict Council against any property owner or lessee to enforce the obligations of such owner or lessee pursuant to any restrictive declaration entered into in connection with a transfer of development rights pursuant to Section 81-744 (Transfer of development rights from listed theaters). Notwithstanding the foregoing, funds shall not be used for the physical repair and preservation of theaters.

The Theater Subdistrict Council shall provide an annual report to the Department of City Planning, the Comptroller, the Speaker and the City Planning Commission indicating the amounts and dates of any deposits to the Theater Subdistrict Fund in the immediately preceding calendar year, the balance of the Theater Subdistrict Fund at the close of the calendar year, the amounts expended on activities within the Theater Subdistrict and the nature of those activities. The Theater Subdistrict Council shall maintain complete, accurate and detailed records, with supporting documentation, in respect to all deposits to and withdrawals from the Theater Subdistrict Fund, and shall make such records available to the City of New York, the Department of City Planning, the Comptroller, the Speaker and the City Planning Commission upon reasonable notice and during business hours for inspection and copying.

(g) Certification for subway station improvements

Within the Theater Subdistrict, any application for a special permit pursuant to the provisions of Section 81-53 (Subway Station Improvements) shall be subject to prior certification by the City Planning Commission in accordance with Section 81-51 (General Provisions).

81-742

Restrictions on demolition of theaters

Listed theaters

No demolition permit shall be issued by the Department of Buildings for any theater listed in this Section as a "listed theater," unless:

- (a) — it is an unsafe #building# and demolition is required pursuant to the provisions of Chapter 26, Title C, Part I, Article 8 of the New York City Administrative Code;
- (b) — it has been designated a landmark by the Landmarks Preservation Commission and a notice to proceed has been issued to the owner pursuant to Section 207-8.0 of Chapter 8A of the New York City Administrative Code permitting demolition that contemplates removal of the theater from theater #use#; or
- (c) — the City Planning Commission, by special permit after public notice and hearing and subject to Board of Estimate action permits its demolition upon making the following findings:
  - (1) — that demolition of the theater structure will not unduly diminish the character of the Theater Subdistrict as a cultural, entertainment and theatrical showcase, taking into consideration any or all of the following list of factors:
    - (i) — current physical characteristics of the theater that affect its suitability as a legitimate theater, including but not limited to seating capacity, configuration and location;
    - (ii) — history of its #use# as a legitimate theater, presenting legitimate attractions to the general public;
    - (iii) — likelihood of its future #use# for legitimate theater production under reasonable terms and conditions prevailing in the theater industry;
    - (iv) — applicant's plans, if any, for replacement of the theater structure with a #development# containing replacement #uses# supportive of the character of the Theater Subdistrict; and
  - (2) — that there exists a legal commitment binding upon all parties in interest of the #zoning lot# containing the theater that any #development# or #enlargement# on a #zoning lot# containing a portion or all of the former site of the listed theater shall reserve floor space at least equivalent in amount to the total #floor area# of the theater devoted exclusively to #uses# described in Section 81-725 (Entertainment related uses) and meeting the requirements of Section 81-724 (Requirements for entertainment related uses) for the life of such #development# or #enlargement#. If the area of the #zoning lot# containing the theater is less than 20,000 square feet and the Commission finds that the allocation of floor space at least equivalent in amount to the total #floor area# of the theater to #uses# described in Section 81-725 (Entertainment related uses) is

impractical or unreasonable, the Commission may authorize a reduction in the amount of area allocated to such #uses#.

Any #development# or #enlargement# on a #zoning lot# containing a portion or all of the former site of a listed theater must, however, meet the requirements of Section 81-724 (Requirements for entertainment related uses), whether or not the #zoning lot# is located within the area described in that Section.

The theaters to which the provisions of this Section apply are predominantly free-standing theaters with full stage and wings and are identified as listed theaters in Table A of this Section.

TABLE A  
LISTED THEATERS

Theater Name	Address	Block Number	Lot Number
*Ambassador	215 West 49th St.	1021	15
*Barrymore	243 West 47th St.	1019	12
-Belasco	111 West 44th St.	997	23
*Biltmore	261 West 47th St.	1019	5
*Booth	222 West 45th St.	1016	15
*Broadhurst	235 West 44th St.	1016	11
*Broadway	1681 Broadway	1024	46
*Brooks Atkinson	256 West 47th St.	1018	57
-City Center	131 West 55th St.	1008	15
*Cort	138 West 48th St.	1000	49
*Ed Sullivan	1697 Broadway	1025	43
-Empire	236 West 42nd St.	1013	50
*Eugene O'Neill	230 West 49th St.	1020	53
*Forty Sixth St.	226 West 46th St.	1017	48
*Golden	252 West 45th St.	1016	58
-Harris	226 West 42nd St.	1013	45
*Helen Hayes	240 West 44th St.	1015	51
*Henry W. Miller	124 West 43rd St.	995	45
*Hudson	139 West 44th St.	997	15
*Imperial	249 West 45th St.	1017	10
-Liberty	234 West 42nd St.	1013	49
*Longacre	220 West 48th St.	1019	50
*Lunt Fontanne	205 West 46th St.	1018	20
-Lyceum	149 West 45th St.	998	8
-Lyric	213 West 42nd St.	1014	39
*Majestic	245 West 44th St.	1016	5
*Mark Hellinger	237 West 51st St.	1023	11
*Music Box	239 West 45th St.	1017	11
*Nederlander	208 West 41st St.	1012	30

*Neil Simon	250 West 52nd St.	1023	54
<del>New Amsterdam</del>	<del>214 West 42nd St.</del>	<del>1013</del>	<del>39</del>
<del>New Amsterdam</del>	<del>214 West 42nd St.</del>	<del>1013</del>	<del>39</del>
<del>Roof Garden</del>			
<del>New Apollo</del>	<del>234 West 43rd St.</del>	<del>1014</del>	<del>20</del>
*Palace	1564 Broadway	999	63
*Plymouth	236 West 45th St.	1016	51
<del>Ritz</del>	<del>225 West 48th St.</del>	<del>1020</del>	<del>14</del>
*Royale	242 West 45th St.	1016	55
*St. James	246 West 44th St.	1015	54
<del>Selwyn</del>	<del>229 West 42nd St.</del>	<del>1014</del>	<del>17</del>
*Shubert	225 West 44th St.	1016	15
*Studio 54	254 West 54th St.	1025	58
<del>Times Square</del>	<del>219 West 42nd St.</del>	<del>1014</del>	<del>20</del>
*Victory	209 West 42nd St.	1014	25
*Virginia	245 West 52nd St.	1024	7
*Winter Garden	1634 Broadway	1022	2

\* ————— Indicates theater which may be retained for a #floor area# bonus under the provisions of Section 81-744 (Floor area bonus for retention of certain existing listed theaters), provided that it is not already subject to an agreement under Section 81-743 (Required assurances for continuance of legitimate theater use):

In the case of an existing legitimate theater for whose construction bonus #floor area# was granted pursuant to regulations in effect prior to the May 13, 1982, no provisions of this amendment shall be construed as changing any previously existing responsibility of the owner or lessee of such theater for continuance of its #use# as a legitimate theater.

(a) Designation of listed theaters

“Listed theaters” are theaters to which special provisions of this and other Sections as set forth in 81-741 (General provisions) apply, and are predominantly free-standing theaters with full stage and wings. The theaters identified in the following table are designated as "listed theaters."

LISTED THEATERS

<u>Theater Name</u>	<u>Address</u>	<u>Block Number</u>	<u>Lot Number</u>
<u>Ambassador</u>	<u>215 West 49th St.</u>	<u>1021</u>	<u>15</u>
<u>Barrymore</u>	<u>243 West 47th St.</u>	<u>1019</u>	<u>12</u>
<u>Belasco</u>	<u>111 West 44th St.</u>	<u>997</u>	<u>23</u>
<u>Biltmore</u>	<u>261 West 47th St.</u>	<u>1019</u>	<u>5</u>
<u>Booth</u>	<u>222 West 45th St.</u>	<u>1016</u>	<u>15</u>
<u>Broadhurst</u>	<u>235 West 44th St.</u>	<u>1016</u>	<u>11</u>
<u>Broadway</u>	<u>1681 Broadway</u>	<u>1024</u>	<u>46</u>
<u>Brooks Atkinson</u>	<u>256 West 47th St.</u>	<u>1018</u>	<u>57</u>

	City Center	131 West 55th St.	1008	15
	Cort	138 West 48th St.	1000	49
	Ed Sullivan	1697 Broadway	1025	43
*	Empire	236 West 42nd St.	1013	50
	Eugene O'Neill	230 West 49th St.	1020	53
	Forty-Sixth St.	226 West 46th St.	1017	48
	Golden	252 West 45th St.	1016	58
*	Harris	226 West 42nd St.	1013	45
	Helen Hayes	240 West 44th St.	1015	51
	Henry W. Miller	124 West 43rd St.	995	45
	Hudson	139 West 44th St.	997	15
	Imperial	249 West 45th St.	1017	10
*	Liberty	234 West 42nd St.	1013	49
	Longacre	220 West 48th St.	1019	50
	Lunt-Fontanne	205 West 46th St.	1018	20
	Lyceum	149 West 45th St.	998	8
*	Lyric	213 West 42nd St.	1014	39
	Majestic	245 West 44th St.	1016	5
	Mark Hellinger	237 West 51st St.	1023	11
	Martin Beck	302 West 45th St.	1035	37
	Music Box	239 West 45th St.	1017	11
	Nederlander	208 West 41st St.	1012	30
	Neil Simon	250 West 52nd St.	1023	54
*	New Amsterdam	214 West 42nd St.	1013	39
*	New Amsterdam-			
	Roof Garden	214 West 42nd St.	1013	39
*	New Apollo	234 West 43rd St.	1014	20
	Palace	1564 Broadway	999	63
	Plymouth	236 West 45th St.	1016	51
	Ritz	225 West 48th St.	1020	14
	Royale	242 West 45th St.	1016	55
	St. James	246 West 44th St.	1015	54
*	Selwyn	229 West 42nd St.	1014	17
	Shubert	225 West 44th St.	1016	15
	Studio 54	254 West 54th St.	1025	58
*	Times Square	219 West 42nd St.	1014	20
*	Victory	209 West 42nd St.	1014	25
	Virginia	245 West 52nd St.	1024	7
	Winter Garden	1634 Broadway	1022	2

\* Indicates theaters which do not qualify as a "granting site" pursuant to Section 81-744 (Transfer of development rights from listed theaters).

In the case of an existing legitimate theater that received a #floor area# bonus pursuant to regulations in effect prior to May 13, 1982, no provisions of this amendment shall be construed as changing any previously existing responsibility of the owner or lessee of such theater for continuance of its #use# as a legitimate theater.

(b) Restrictions on demolition of listed theaters

No demolition permit shall be issued by the Department of Buildings for any theater listed in this Section as a "listed theater," unless:

- (1) it is an unsafe #building# and demolition is required pursuant to the provisions of Section 26-127 of Title 26, Chapter 1, of the New York City Administrative Code;
- (2) it has been designated a landmark by the Landmarks Preservation Commission and a notice to proceed has been issued to the owner pursuant to Section 25-309 of Title 25, Chapter 3, of the New York City Administrative Code permitting demolition that contemplates removal of the theater from theater #use#; or
- (3) the City Planning Commission, by special permit, allows its demolition in accordance with the provisions of paragraph (c) of this Section.

(c) Special permit for demolition of listed theaters

The City Planning Commission may allow, by special permit, the demolition of a theater designated as a "listed theater" pursuant to this Section, provided the Commission finds that the demolition of the theater structure will not unduly diminish the character of the Theater Subdistrict as a cultural, entertainment and theatrical showcase. In making this determination, the Commission may consider any or all of the following:

- (1) the current physical characteristics of the theater that affect its suitability as a legitimate theater, including but not limited to seating capacity, configuration and location;
- (2) the history of the theater's #use# as a legitimate theater, presenting legitimate attractions to the general public;
- (3) the likelihood of its future #use# for legitimate theater production under reasonable terms and conditions prevailing in the theater industry; and/ or
- (4) that the applicant's plans, if any, for replacement of the theater structure with a #development# contain replacement #uses# supportive of the character of the Theater Subdistrict.

As a condition of the special permit, there shall exist a legal commitment binding upon all parties in interest of the #zoning lot# containing the theater that any #development# or #enlargement# on a #zoning lot# containing a portion or all of the former site of the "listed theater," that floor space at least equivalent in amount to the total #floor area# of the theater shall be reserved or devoted exclusively to #uses# described in Section 81-725 (Entertainment-related uses) and meeting the requirements of paragraphs (b) and (c) of Section 81-724 (Requirements for entertainment-related uses) for the life of such #development# or #enlargement#. Notwithstanding the foregoing, if the area of the #zoning lot# containing the theater is less than 20,000 square feet and the Commission finds that the allocation of floor

space at least equivalent in amount to the total #floor area# of the theater to #uses# described in Section 81-725 is impractical or unreasonable, the Commission may permit a reduction in the amount of area allocated to such #uses#.

Any #development# or #enlargement# on a #zoning lot# containing a portion or all of the former site of a “listed theater” must, however, meet the requirements of paragraphs (b) and (c) of Section 81-724 whether or not the #zoning lot# is located within the area described in that Section.

81-743

Required assurances for continuance of legitimate theater use

~~As a condition for~~ Prior to the issuance of any special permit under the provisions of Sections 81-745 (Floor area bonus for rehabilitation of existing listed theaters) or Section 81-747 (Transfer of development rights from landmark theaters), or the issuance of a certification or authorization under the provisions of Sections 81-744 (Floor area bonus for retention of certain existing listed theaters) (Transfer of development rights from listed theaters) or Section 81-746 (Modification of special provisions for zoning lots divided by district boundaries Additional provisions for zoning lots divided by district or subdistrict core boundaries), there the following conditions shall exist:

- (a) a signed lease from a prospective theater operator, or a written commitment from the owner of the theater if such owner is also the operator, ~~with credentials acceptable to the City Planning Commission,~~ for occupancy of the theater and its operation as a legitimate theater for a period of not less than five years;
- (b) a licensed engineer's and/or architect's report certifying either that the theater is physically and operationally sound so as to permit its use as a legitimate theater or, if it is determined that the theater is not physically or operationally sound, a plan and program for the upgrade of the theater to put it in condition of physical and operational soundness. For the purposes of this Section, physical and operational soundness shall include the structural integrity of the exterior and interior elements of the building to the extent that they relate to the theater, compliance with applicable electrical and fire safety codes, and compliance with applicable building code standards. The plan and program shall further provide that adequate resources be available to ensure timely completion of the scope of work identified in the plan and program as necessary to ensure the physical and operational integrity of the theater.

In the event that the theater has been designated as a landmark or an interior landmark by the Landmarks Preservation Commission, physical and operational soundness shall include preserving the integrity of existing significant architectural features identified in the Landmarks Preservation Commission designation report. In such case, a licensed engineer and/or architect with knowledge of historic preservation and credentials acceptable to the Landmarks Preservation Commission shall prepare a report documenting the condition of such significant architectural features and, if determined to be necessary, a plan and program to

preserve such significant features in a state of good physical repair and sound proper condition. Such plan and program shall provide that adequate resources be available to ensure timely completion of the scope of work identified in the plan and program. Any certification report regarding a landmark or interior landmark theater shall be submitted concurrently to the Landmarks Preservation Commission and the Chairperson of the City Planning Commission;

- ~~(e) a plan and program approved by the Commission for periodic inspection and continuing maintenance of the theater to ensure its continuing availability for theater #use#. Inspections shall be conducted by a certified engineer and/or architect, and a report of each such inspection given to Commission at least once every three years. The plan and program shall further provide that adequate financial resources will be available to ensure the timely completion of all maintenance and repairs which the periodic inspection report determines are necessary to protect the integrity and functioning of the theater; and~~
- (c) a legal commitment providing for inspection and ongoing maintenance of the theater to ensure its continued availability for theater use. Such inspection shall be conducted every five years by a licensed engineer and/or architect or by the Theater Subdistrict Council, 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 also be issued to the Theater Subdistrict Council unless the Theater Subdistrict Council has performed such inspection, and, in the event the theater has been designated a landmark or an interior landmark, such report shall also be issued to the Landmark Preservation Commission and notice of such report shall be published in the City Record. Such reports shall describe the condition of the theater and identify any maintenance or repair work necessary to ensure the physical and operational soundness of the theater and to maintain the condition of any landmark architectural features 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
- ~~(b)(d) a legal commitment binding upon the owner and lessee of the theater for continuance of its #use# as a legitimate theater for the life of the related #development#.~~

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, lessee of the theater 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 declaration and receipt of such certified copy shall be preconditions to issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement# on the receiving site.

81-744

Floor area bonus for retention of certain existing listed theaters

~~The Chairperson of the City Planning Commission by certification may authorize bonus #floor area# for any #development# or #enlargement# where an agreement exists to retain and maintain for legitimate theater #use# one or more eligible listed theaters as set forth in Section 81-742 (Restrictions~~

on demolition of theaters). The #development# or #enlargement# and each listed theater to be retained may be located on the same or a separate #zoning lot#.

(a) ~~Amount of retention bonus~~

(1) ~~If the #zoning lot# on which the #development# or #enlargement# is located is within the Theater Subdistrict but wholly outside of the Theater Subdistrict Core, all as defined in Section 81-71 (General Provisions), the amount of bonus #floor area# granted shall not exceed the amount of #floor area# derived from applying a #floor area ratio# of 1.0 over the total area of the #zoning lot#.~~

~~If the #zoning lot# on which the #development# or #enlargement# is located is divided by a boundary of the Theater Subdistrict Core, as defined in Section 81-71 (General Provisions), the amount of bonus #floor area# granted shall not exceed the amount of #floor area# derived from applying a #floor area ratio# of 1.0 over the sum of:~~

- ~~(i) the area of the #zoning lot# which is outside of the Theater Subdistrict Core; and~~
- ~~(ii) an area of the #zoning lot# within the Theater Subdistrict Core, not exceeding the area in paragraph (i).~~

(2) ~~Such bonus #floor area# may be obtained at a rate of up to 50,000 square feet for each theater which is retained as a condition of the granting of the bonus.~~

(3) ~~If the #zoning lot# on which the #development# or #enlargement# is located exceeds 50,000 square feet in area, agreements may be entered into to retain and maintain more than one theater for legitimate theater #use# so as to obtain bonus #floor area# not exceeding the amount specified in paragraph (1) of this Section.~~

(b) ~~Location of development or enlargement~~

~~The #development# or #enlargement# for which a theater retention bonus is granted shall be located within the Theater Subdistrict, whose boundaries are shown on Map 1 (Special Midtown District and Subdistricts) in Appendix A, but shall not be located on a #zoning lot# which is contained entirely within the Theater Subdistrict Core. If the #zoning lot# on which the #development# or #enlargement# is located is divided by a boundary of the Theater Subdistrict Core and if the basic maximum #floor area ratio# as set forth in Section 81-211 (Maximum floor area ratios for non-residential or mixed buildings) is the same for both the portion of the #zoning lot# within the Core and the portion outside of the Core, bonus #floor area# must be utilized on the #zoning lot# in accordance with the provisions of paragraph (b) of Section 81-746 (Additional provisions for zoning lots divided by district or Subdistrict Core boundaries). Each listed theater which is retained as a condition of the granting of the bonus may be located on a #zoning lot# which is the same as or separate from the #zoning lot# containing the #development# or #enlargement#.~~

(e) — ~~Conditions for retention bonus~~

~~As a condition for the granting of bonus #floor area# under the provisions of this Section, the following requirements shall be satisfied:~~

- ~~(1) — A written declaration to be recorded against both the #zoning lot# of each listed theater and the #zoning lot# of the #development# or #enlargement# shall exist meeting all of the requirements of Section 81-743 (Required assurances for continuance of legitimate theater use) that the listed theater will be retained and maintained for legitimate theater #use#. The certificates of occupancy for each listed theater and the #development# or #enlargement# for which bonus #floor area# is granted shall record and incorporate a copy of such agreement, and occupancy of the bonus #floor area# shall be conditioned upon continued compliance therewith.~~
- ~~(2) — Bonus #floor area# under the provisions of this Section may only be granted for the retention of listed theaters indicated thus (\*) in Table A of Section 81-742 (Restrictions on demolition of theaters); no bonus #floor area# shall be granted for retention of any listed theater already subject to an agreement pursuant to the conditions of Section 81-743 (Required assurances for continuance of legitimate theater use).~~

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 Table A of Section 81-742 (Listed Theaters) 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.

Any application for certification pursuant to this Section 81-744 shall be referred to the affected Community Board, the local Council Member and the Borough President of Manhattan. The Commission shall not grant such certification prior to thirty days after such referral and thirty days after the date any reports required to be submitted to the Landmarks

Preservation Commission pursuant to Section 81-743(b), or the Theater Subdistrict Council pursuant to Section 81-71 (General Provisions) have been so submitted.

(b) 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:

- (i) 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";
- (ii) 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 (Maximum floor area ratio for non-residential or mixed buildings) for such portion of a "receiving site" by more than 20 percent; and
- (iii) notwithstanding the maximum amount of #floor area# allowed to be transferred pursuant to paragraph (ii) above, 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

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

- (1) that 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; and
- (2) that 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.

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

(c) 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) 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."

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 (Restrictions on demolition of 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; and~~

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

~~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 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#.

81-746

Additional provisions for zoning lots divided by district or subdistrict core boundaries

- (a) For any #zoning lot# which includes a "listed theater" as set forth in Section 81-742 (~~Restrictions on demolition of theaters~~) (Listed theaters) or is or contains a "receiving site" pursuant to Section 81-744 (Transfer of development rights from listed theaters), and which is divided by a boundary between districts with different #bulk# regulations, basic maximum #floor area ratios# as set forth in Section 81-211 (Maximum floor area ratio for non-residential or mixed buildings), the Chairperson of the City Planning Commission, by certification, ~~may shall authorize~~ allow modifications of the provisions of Sections 77-02 (Zoning Lots Not Existing Prior to Effective Date or Amendment of Resolution), ~~Section~~ 77-21 (General Provisions), ~~Section~~ 77-22 (Floor Area Ratio) and ~~Section~~ 77-25 (Lot Area or Floor Area Requirements), ~~as follows.~~

For any #zoning lot#, ~~whether or not it existed on December 15, 1961, or on the date of any applicable subsequent amendment thereto,~~ #floor area# or #rooms# permitted by the applicable district regulations on ~~that either~~ either side of the district boundary ~~occupied by the theater~~ may be located on the other side of the district boundary, ~~subject to the following conditions provided:~~

- (1) the amount of such #floor area# to be located on ~~the other~~ either side of the district boundary shall not exceed 20 percent of the basic maximum #floor area ratio# of the district in which it is to be located;
- (2) the number of such #rooms#, if any, to be located on ~~the other~~ either side of the district boundary shall not exceed the number permitted by the #floor area per room# requirements as set forth in Section 81-242 (Density regulations for residential and mixed buildings); and
- (3) ~~compliance with~~ the provisions of Section 81-743 (Required assurances for continuance of legitimate theater use) are met for any listed theater on such #zoning lot#.

The Chairperson's certification approving modification of the provisions for such #zoning lots# divided by district boundaries shall state the total amount of #floor area#, including #floor area# of ~~the any~~ the existing theater, to be provided on the #zoning lot# as a whole and the portion thereof to be located in each district, and the amount authorized herein to be located across the

district boundary from the district in which the theater is located.

Notice of the restrictions upon further #development# of each portion of the #zoning lot# shall be recorded by the owner against the #zoning lot# in the Office of the Register of the City of New York (County of New York) and a certified copy shall be submitted to the Commission.

(b) Notwithstanding any other provisions of this Resolution, for any #zoning lot# which is divided by a boundary of the Theater Subdistrict Core as defined in Section 81-71 (General Provisions) and for which the basic maximum #floor area ratio# as set forth in Section 81-211 (~~Maximum floor area ratios for non-residential or mixed buildings~~) is the same for both the portion within and the portion outside of the Theater Subdistrict Core, the applicable underlying #bulk# regulations shall be modified, as follows:

- (1) #floor area#, including bonus #floor area#, or #rooms# permitted by the applicable district regulations on that portion of the #zoning lot# within the Theater Subdistrict Core may be located on the portion of the #zoning lot# outside the Core, provided that the number of such #rooms#, if any, to be located outside of the Core shall not exceed the number permitted by the #floor area per room# requirements as set forth in Section 81-242 (~~Density regulations for residential and mixed buildings~~); and
- (2) #floor area#, including bonus #floor area#, or #rooms# permitted by the applicable district regulations on that portion of the #zoning lot# outside of the Theater Subdistrict Core shall not be located on the portion of the #zoning lot# within the Core.

(c) Notwithstanding any other provisions of this Resolution, for any #zoning lot# located wholly within the Theater Subdistrict and outside of the Theater Subdistrict Core that is divided by a boundary of the Eighth Avenue Corridor as defined in Section 81-71 (General Provisions) and for which the basic maximum #floor area ratio# as set forth in Section 81-211 (Maximum floor area ratios for non-residential or mixed buildings) is the same for both the portion within and the portion outside of the Eighth Avenue Corridor, #floor area#, including bonus #floor area#, or #rooms# permitted by the applicable district regulations may be located on either side of the Eighth Avenue Corridor boundary.

\* \* \*

### 81-748

#### Floor area bonus for through block gallerias

~~Upon certification by the City Planning Commission that the requirements of this Section are satisfied, a #development# within the Theater Subdistrict, but outside of the Theater Subdistrict Core, which provides a through #block# galleria shall be eligible for bonus #floor area# in the amount of 6 square feet for each square foot of through #block# galleria area, provided that in no case shall such bonus #floor area# exceed a #floor area ratio# of 1.0.~~

A through #block# galleria is a continuous covered public space on a #zoning lot#, which connects two parallel or nearly parallel east-west #streets# and provides for through #block# pedestrian circulation as well as other pedestrian amenities appropriate to the Theater Subdistrict. A through #block# galleria shall satisfy the following requirements:

(a) — District plan requirements

A through #block# galleria shall be located within the Theater Subdistrict but outside of the Theater Subdistrict Core. It shall be located not less than 200 feet from a #wide# north-south #street#. It shall satisfy the requirements of Section 81-46 (Through Block Connection). It may be counted toward meeting the minimum pedestrian circulation space requirements as set forth in Section 81-45 (Provision of Pedestrian Circulation Space) up to a maximum of 3,000 square feet. For any #zoning lot# on which a through #block# connection is not permitted by the provisions of Section 81-46 as counting towards meeting the pedestrian circulation space requirements of Section 81-45, no bonus shall be allowed for a through #block# galleria.

(b) — Location

At each end it shall adjoin and open onto a #street#, a sidewalk widening, a #plaza# or an #urban plaza# adjacent to the #street#. It shall provide continuous, unobstructed access from one end to the other.

(c) — Elevation

It shall have the same grade elevation at each end as the sidewalk, sidewalk widening or #urban plaza# which it adjoins. This elevation shall be maintained for at least 20 feet from the end, beyond which a grade change, if any, is permitted only to reconcile grade differences between the two ends. Provisions for changes in grade shall include ramps for wheelchair users with a maximum slope of one to twelve.

(d) — Access

It shall be open at each end, with width and height of opening not less than the applicable minimum width and height set forth in paragraph (e) of this Section. It may connect with, but not serve as, lobby space for a new #building# or a theater. It shall be open to the public between the hours of 8:00 a.m. and 7:00 except for certain legal holidays (December 25, January 1 and July 4).

(e) — Minimum dimensions

Minimum dimensions depend on the length of the through #block# galleria, as follows:

— THROUGH BLOCK GALLERIA LENGTH

	less than	150 feet
	150 feet	or more
Minimum width	20 feet	25 feet
Average width	20 feet	30 feet
Minimum height	20 feet	25 feet
Average height	20 feet	20 feet

(f) ~~Minimum clear path~~

Except as provided in paragraph (g) (Permitted obstructions), there shall be a straight path, clear of all obstructions, including door swings, extending from one end of the galleria to the other, with a minimum width of 15 feet. Where the through #block# galleria is adjoined at one or both ends by a sidewalk widening, #plaza# or #urban plaza#, such minimum width of clear path shall be continued across the adjoining open space to the #street line#.

(g) ~~Permitted obstructions~~

- (1) ~~Columns or posts are permitted obstructions provided that the minimum width of the through #block# galleria exclusive of column widths shall be 20 feet and that the clear path width is at least 15 feet or two clear paths are provided, the paths being separated by columns and each having a minimum width of 10 feet.~~
  
- (2) ~~In areas outside the minimum clear path or paths, obstructions such as the following are permitted: planters, seating areas, landscape features, fountains, works of art, food kiosks, litter receptacles, drinking fountains, lights or lighting stanchions, public telephones, temporary exhibitions, retractable awnings and canopies and movable tables and chairs, provided that the total area occupied by such obstructions is less than 50 percent of the total area of the through #block# galleria minus the required clear path area.~~
  
- (3) ~~For through #block# gallerias with areas larger than 3,000 square feet, public seating is required. There shall be at least one linear foot of seating for each 20 square feet of through #block# galleria area in excess of 3,000 square feet.— The design standards for seating shall be as set forth in paragraph (j) of Section 37-043 (Urban plaza). Eating or drinking service may be provided adjacent to, but not within, the through #block# galleria. All seating within the through #block# galleria shall be accessible to the public.~~
  
- (4) ~~For through #block# gallerias with an average height of at least 45 feet, bridges or balconies are permitted as obstructions, provided that such bridges or balconies are at least 15 feet above the floor level of the galleria, the width of the bridge is not more than 8 feet, the width of a balcony is not more than 5 feet and the total area of such obstructions is not more than 10 percent of the total~~

~~area of the galleria. Such obstructions may be enclosed provided that such enclosures are not more than 15 feet in height.~~

~~(h) — Treatment of bounding walls~~

~~Along the length of a through #block# galleria, the bounding walls, except for walls along a #side lot line#, shall be lined insofar as possible with areas accessible to the public, display windows, or other exhibits, and such bounding walls shall be of transparent material. Walls along a #side lot line# may be treated with planting or other landscape features.~~

~~(i) — Skylights~~

~~(1) — Design standard~~

~~Skylights shall be provided having a minimum surface area equal to at least 75 percent of the through #block# galleria, and skylights shall cover at least 50 percent of the galleria's area as measured in plan and shall be unobstructed from the skylights up to the sky.~~

~~(2) — Modification of design standard~~

~~The City Planning Commission may authorize a modification of the minimum area of a skylight for a through #block# galleria under the following conditions:~~

- ~~(i) — the through #block# galleria contains a minimum area of 6000 square feet;~~
- ~~(ii) — the minimum height of the through #block# galleria is at least double its average width; and~~
- ~~(iii) — the exterior bounding walls of the through #block# galleria are open or glazed above a height of 30 feet so as to permit additional natural light into the space.~~

~~The total amount of such open or glazed area, including the skylight shall be equal to at least 75 percent of the area of the through #block# galleria.~~

~~(j) — Penalties for violations~~

~~Failure to comply with the conditions or restrictions of the bonused amenity shall constitute a violation of this Resolution and shall constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies.~~

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 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.

81-75

Special Street Wall and Setback Requirements

#Developments# or #enlargements# located on #zoning lots# or portions of #zoning lots# within the Theater Subdistrict Core or the Eighth Avenue Corridor shall comply with the regulations of this Section. The height of all #buildings or other structures# shall be measured from #curb level#.

81-7581-751

Special Street wall and setback ~~Requirements~~ regulations within the Theater Subdistrict Core

#Developments# or #enlargements# located on #zoning lots# between 43rd and 50th Streets with #street# frontage on Seventh Avenue and/or Broadway, or located partially within the Theater Subdistrict Core and partially within the Eighth Avenue Corridor shall comply with the requirements of this Section, and, in all other respects related to height and setback, with the provisions of Sections 81-25 (General Provisions Relating to Height and Setback of Buildings), and either Section 81-26 (Height and Setback Regulations - Daylight Compensation) ~~and~~ or 81-27 (Alternate Height and Setback Regulations - Daylight Evaluation).

\* \* \*

- (b) The #street wall# of any #building# on a #zoning lot# between 43rd and 50th Streets and between Seventh Avenue and Broadway shall have a minimum #street wall# height of 50 feet ~~above #curb level#~~ on all #street# frontages.
- (c) For #zoning lots# located partially within the Theater Subdistrict Core and partially within the Eighth Avenue Corridor, the #street wall# of any #building# or portion of a #building# within the Theater Subdistrict Core shall have a minimum #street wall# height of 50 feet or the height of the #building#, whichever is less, and a maximum #street wall# height of 60 feet within 15 feet of the #narrow street line#.

Special street wall and setback regulations within the Eighth Avenue Corridor

#Developments# or #enlargements# on #zoning lots# located in whole or in part within the Eighth Avenue Corridor, as defined in Section 81-71, and east of Eighth Avenue shall comply with the requirements of this Section, and except as superseded by this Section, with the provisions of Section 81-25 (General Provisions Relating to Height and Setback of Buildings), and either Section 81-26 (Height and Setback Regulations - Daylight Compensation) or 81-27 (Alternate Height and Setback Regulations - Daylight Evaluation).

#Developments# or #enlargements# on #zoning lots# located in whole or in part within the Eighth Avenue Corridor, as defined in Section 81-71, and west of Eighth Avenue shall comply with the requirements of this Section. The provisions of Sections 81-25, 81-26 and 81-27 shall not apply.

(a) Street wall location and minimum and maximum heights before setbacks

- (1) On Eighth Avenue and 42nd Street, #street walls# shall extend along the entire #street# frontage of the #zoning lot# to a minimum height of 50 feet or the height of the #building#, whichever is less. At least 70 percent of the #aggregate width of street walls# shall be located on the #street line#, and the remaining 30 percent of the #aggregate width of street walls# may be located beyond the #street line# in compliance with #residential outer court# regulations for #residential# portions of #buildings# and #community facility outer court# regulations for all other portions of #buildings#. However, within 30 feet of the intersection of two #street lines#, #street walls# shall comply with the location requirements of paragraph (a)(3) of this Section. The maximum height of #street walls# within 10 feet of the #wide street line# shall be 150 feet beyond 15 feet of a #narrow street line# and 85 feet within 15 feet of a #narrow street line#.
- (2) On a #narrow street# east of Eighth Avenue, and on a #narrow street# west of and within 100 feet of Eighth Avenue, #street walls# shall extend along the entire width of such #narrow street# frontage of the #zoning lot# to a minimum height of 50 feet or the height of the #building#, whichever is less. At least 70 percent of the #aggregate width of street walls# along such #narrow street# frontage shall be located on the #street line#, and the remaining 30 percent of the #aggregate width of street walls# may be located beyond the #street line# in compliance with #residential outer court# regulations for #residential# portions of #buildings# and #community facility outer court# regulations for all other portions of #buildings#. However, within 30 feet of the intersection of two #street lines#, #street walls# shall comply with the location requirements of paragraph (a)(3) of this Section. The maximum height of #street walls# within 15 feet of the #narrow street line# shall be 85 feet.

No #street walls# are required along a #narrow street# west of and beyond 100 feet of Eighth Avenue provided at least 70 percent of the entire frontage of the #zoning lot# along such

#narrow street# is occupied by #street walls# located on the #street line#. The maximum height of #street walls# within 15 feet of the #narrow street line# shall be 66 feet, except in accordance with paragraph (b) or (c)(3) of this Section.

(3) Within 30 feet of the intersection of two #street lines#, the #street wall# shall be located on the #street line# or anywhere within an area bounded by the two #street lines# and lines parallel to and 15 feet from such #street lines#.

(4) For #developments# that occupy the entire #block# frontage of a #wide street# and provide a continuous sidewalk widening along such #street line#, the boundary of the sidewalk widening shall be considered to be the #street line# for the purposes of this Section.

The #street wall# location and minimum height before setback regulations of this Section shall not apply to portions of #zoning lots# occupied by existing #buildings#.

(b) Special street wall regulations for buildings adjacent to listed theaters

For #developments# or #enlargements# that are adjacent to a theater listed pursuant to Section 81-742 (Listed theaters), the maximum height of the #street wall# of the #development# or #enlargement# facing the same #street# as the “listed theater” shall be 60 feet within 15 feet of the #street line#.

(c) Additional regulations applying west of Eighth Avenue

(1) West of Eighth Avenue, at any level above a height of 85 feet, any #building# or #buildings# or portions thereof shall, in the aggregate, occupy not more than 40 percent of the #lot area# of the #zoning lot#, except that for #zoning lots# of less than 20,000 square feet of #lot area# this percentage may be increased as set forth in Section 23-651 (Towers on small lots). At any level above a height of 85 feet, any #building# or #buildings# or portions thereof shall, in the aggregate, occupy not less than 33 percent of the #lot area# of the #zoning lot#, except that such minimum #lot coverage# requirement shall not apply to the highest four #stories# of the #building#.

(2) Beyond 125 feet of the western #street line# of Eighth Avenue, and beyond 100 feet of the northern #street line# of 42nd Street, no #building or other structure# shall exceed a height of 66 feet, except in accordance with paragraph (c)(3) of this Section.

(3) Where the new or #enlarged building# abuts an existing #building# located entirely beyond 125 feet of the western #street line# of Eighth Avenue and the northern #street line# of 42nd Street, and such existing #building# exceeds a height of 66 feet, the new or enlarged #building# may exceed any height limits specified in this Section up to the height of the existing #building#, provided that, within 15 feet of the #narrow street line#, such portion of the new or #enlarged building# does not exceed either the height of the existing #building# or 85 feet, whichever is less. For the purposes of this paragraph, the height of the existing #building# shall be the height of its #street wall#, before setback, if applicable, of that

portion of the existing #building# abutting the new or #enlarged building#, fronting on the same #street line#, and located on the same or adjoining #zoning lot#.

\* \* \*

## Appendix A

### Midtown District Plan Maps

Map 1. Special Midtown District and Subdistricts (REVISED)

Map 2. Retail & Street Wall Continuity (REVISED)

Map 3. Subway Station Improvement Areas (REVISED)

Map 4. Network of Pedestrian Circulation

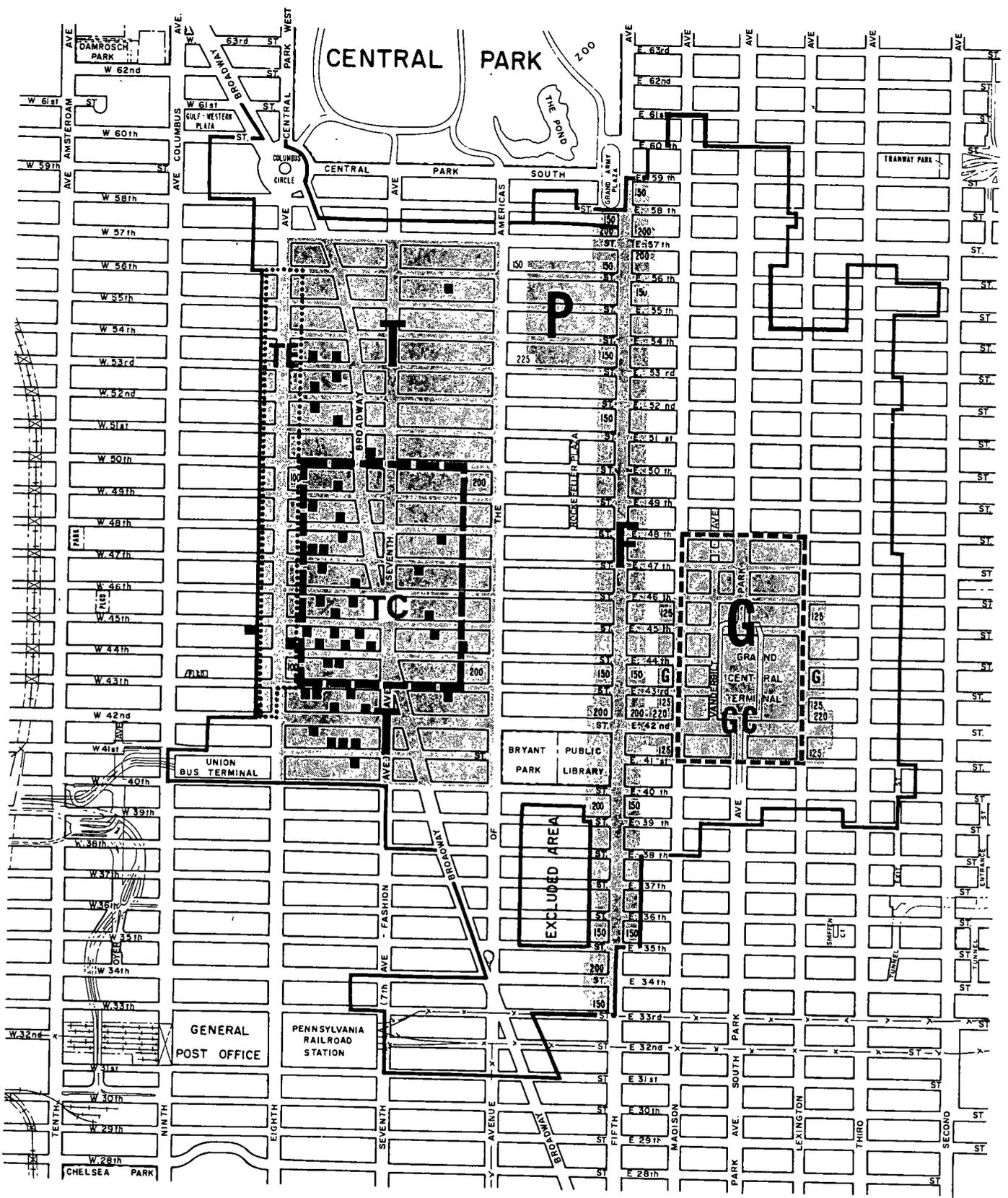
### Daylight Evaluation Charts 1 - 3

Chart 1. Daylight Evaluation Diagram - 60 Foot Street

Chart 2. Daylight Evaluation Diagram - 75 & 80 Foot Streets

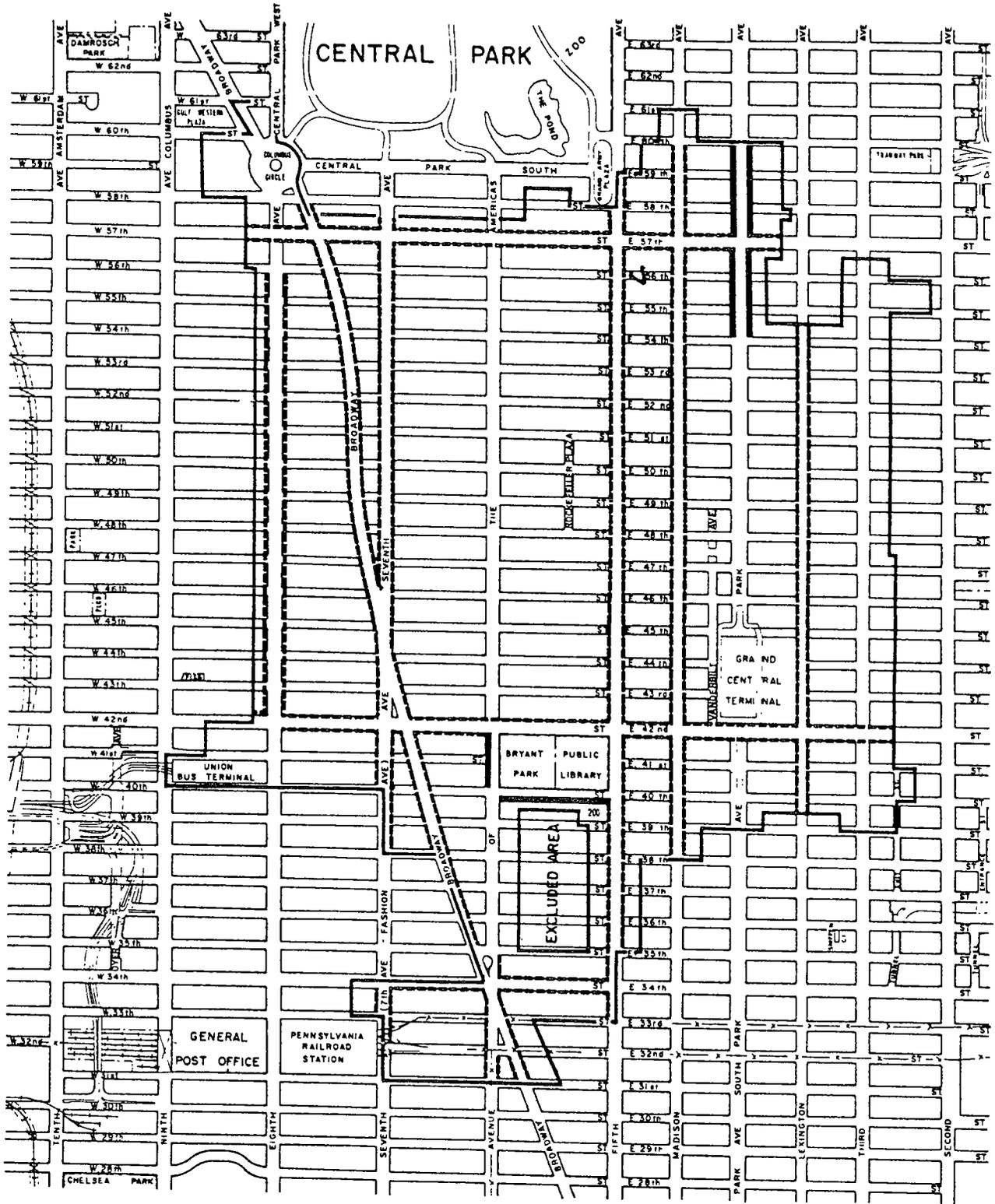
Chart 3. Daylight Evaluation Diagram - 100 or more Foot Streets

\* \* \*



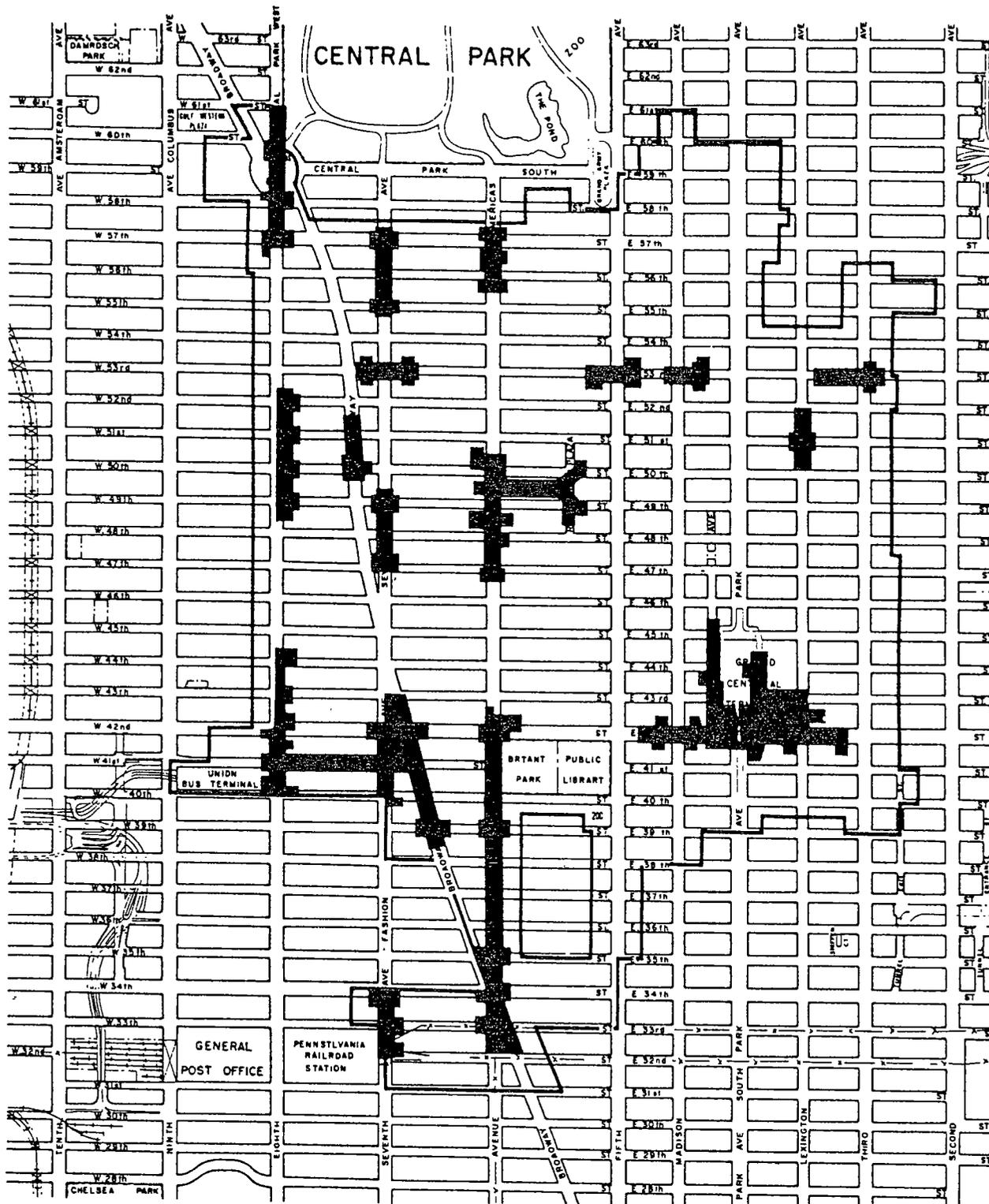
**MIDTOWN DISTRICT PLAN**  
**MAP I - SPECIAL MIDTOWN DISTRICT AND SUB DISTRICTS**

-  FIFTH AVENUE SUB DISTRICT
-  THEATRE SUB DISTRICT
-  PRESERVATION SUB DISTRICT
-  THEATRE SUB DISTRICT CORE
-  THEATRE SUB DISTRICT EIGHTH AVENUE CORRIDOR
-  LISTED THEATRES
-  GRAND CENTRAL SUB DISTRICT
-  GRAND CENTRAL SUB DISTRICT CORE



**MIDTOWN DISTRICT PLAN**  
**MAP 2 - RETAIL AND STREET WALL CONTINUITY**

- RETAIL AND STREET WALL CONTINUITY REQUIRED
- STREET WALL CONTINUITY ONLY REQUIRED



MIDTOWN DISTRICT PLAN  
 MAP 3 - SUBWAY STATION IMPROVEMENT AREAS

Chapter 6  
Special Clinton District

96-00  
GENERAL PURPOSES

The "Special Clinton District" (hereinafter also referred to as the "Special District"), established in this Resolution, is designed to promote and protect public health, safety, general welfare and amenity. Because of the unique geographical location of the Clinton community, situated between the waterfront on the west and a growing central business district on the east, it is necessary to provide specific programs and regulations which will assure realization of community and city-wide goals.

These goals include, among others, the following:

- (a) to preserve and strengthen the residential character of the community;
- (b) to permit rehabilitation and new construction within the area in character with the existing scale of the community and at rental levels which will not substantially alter the mixture of income groups presently residing in the area;
- (c) to preserve the small-scale character and variety of existing stores and activities and to control new commercial uses in conformity with the existing character of the area;
- (d) to recognize the unique character of the eastern edge of the District as an integral part of the Theater Subdistrict within the Special Midtown District as well as the Special Clinton District;
- (e) to provide an appropriate transition from the mixed-use character along Eighth Avenue to the lower-scale residential character of the Clinton community on the narrow streets;
- ~~(d)~~(f) to provide amenities, such as street trees, to improve the physical environment;
- ~~(e)~~(g) to restrict demolition of buildings that are suitable for rehabilitation and continued residential use; and
- ~~(f)~~(h) to promote the most desirable use of land in the area and thus to conserve the value of land and buildings, and thereby protect the City's tax revenues, consistent with the foregoing purposes.

96-01  
Definitions

Definitions specially applicable to this Chapter are set forth in this Section. The definitions of other defined terms are as set forth in Section 12-10 (DEFINITIONS).

## Mixed building

For the purposes of this Chapter, a "mixed building" is a #building# in a #Commercial District# used partly for #residential use# and partly for #community facility# or #commercial use#, or a #building# in a #Residential District# used partly for #residential use# and partly for #community facility use#.

## Special Clinton District (repeated from Section 12-10)

The "Special Clinton District" is a Special Purpose District designated by the letters "CL" in which special regulations set forth in Article IX, Chapter 6 apply.

The #Special Clinton District# and its regulations supplement or supersede those of the districts on which it is superimposed.

## Special Midtown District (repeated from Section 12-10)

The #Special Midtown District# is a Special Purpose District designated by the letters "MiD" in which special regulations set forth in Article VIII, Chapter 1, apply.

## 96-02 General Provisions

Except as modified by the express provisions of this Chapter, the regulations of the underlying districts, or as modified by the #Special Midtown District#, remain in effect.

The #Special Midtown District# and its regulations, where applicable in the #Special Clinton District#, shall also apply and shall supplement or supersede regulations as set forth in this Chapter pursuant to Section 96-202 (Special regulations for perimeter area fronting Eighth Avenue). In the event of any conflict or discrepancy between the regulations, the more restrictive regulations shall apply in accordance with Section 11-22 (Application of Overlapping Regulations). This portion of the Special Purpose District is designated on the #zoning map# by the letters "CL-MiD."

## 96-03 District Map

The District Map for the #Special Clinton District# (Appendix A) identifies specific areas comprising the Special District in which special zoning regulations carry out the general purposes of the #Special Clinton District#. These areas and the sections of this Chapter which contain regulations pertaining thereto are as follows:

Area A - PRESERVATION AREA, Section 96-10  
Area B - PERIMETER AREA, Section 96-20  
Area C - OTHER AREAS, Section 96-30

96-10  
PRESERVATION AREA

96-20  
PERIMETER AREA

#Developments# within the Perimeter Area shall be eligible for increased #floor area# pursuant to Section 96-21 (Floor Area Bonus). Because of increased pressures for #development#, the relocation and demolition provisions of Section 96-23 (Relocation and Demolition of Buildings in the Perimeter Area) shall apply therein for all demolition, #development#, #enlargement# or #extensions# on lots containing #residential uses#. All existing legal #uses# in enclosed #buildings# shall be considered conforming #uses#. Except as otherwise provided in this Chapter, any existing #commercial# or #manufacturing uses# may be changed to another #non-conforming use# only in accordance with the provisions of Sections 52-31 (General Provisions), 52-33 (Manufacturing or Related Uses in Residence Districts), 52-34 (Commercial Uses in Residence Districts), 52-35 (Manufacturing or Related Uses in Commercial Districts) and 52-36 (Non-Conforming Commercial Uses in Commercial Districts).

96-201  
~~Special urban design regulations relating to retail continuity and street wall requirements~~  
Special regulations for 42nd Street Perimeter Area

(a) The provisions of this Section shall apply to #developments# or #enlargements# located in all #Commercial Districts# within the area bounded by the following: Starting 150 feet west of Eighth Avenue, south to the southern boundary of West 41st Street, west to the east side of Twelfth Avenue, north along the eastern border of Twelfth Avenue to 43rd Street, east on West 43rd Street to the eastern side of Tenth Avenue, south along Tenth Avenue to the southern boundary of West 42nd Street, east on West 42nd Street to Ninth Avenue, north along the western boundary of Ninth Avenue to the midblock of 42nd/43rd Street, east to a point 150 feet west of Eighth Avenue, south to the southerly boundary of 41st Street.

(a) Retail continuity requirements

(b)(1) For any #development# or #enlargement# fronting on West 42nd Street, between 9<sup>th</sup> and 12th Avenues, at least 50 percent of the street frontage of the ground floor, or within five feet of #curb level#, shall be limited to Use Groups 4A, 6A, 6C, 10A, 11, 12A and 12B.

(c)(2) At least 50 percent of the length of the facade of such #street wall# fronting on West 42nd Street shall be glazed with transparent material to a height of not less than 16 feet above #curb level#. The lowest point of such glazed area shall not be higher than four feet above #curb level#.

(d)(b) Street Wall Continuity Requirements

- (1) At least 80 percent of the #aggregate width of street walls# of a #building# fronting on West 42nd Street, up to a height of 45 feet, shall be located within 10 feet of the #street line# of such #street#.
- (e) (2) The minimum height of the #street wall# of a #building# above #curb level# shall be no less than 45 feet and no more than 85 feet. Above this required height, the #street wall# of a #building# shall set back at least five feet. The requirements of this paragraph shall also apply to any #development# or #enlargement# on a #wide street# frontage within a distance of 50 feet from its intersection with West 42nd Street.

96-202

Special regulations for Eighth Avenue Perimeter Area

All #developments# or #enlargements# located in an area bounded by a line 150 feet west of Eighth Avenue, West 45th Street, Eighth Avenue and West 42nd Street shall comply with special regulations set forth in Article VIII, Chapter 1 (Special Midtown District), including Section 81-70 (SPECIAL REGULATIONS FOR THEATER SUBDISTRICT).

96-21

Floor Area Increase

- (a) Except as specified in paragraph (b) of this Section, ~~F~~for any #development#, the #floor area ratio# permitted by the underlying district may be increased from 10.0 to 12.0 only by complying with the provisions of Section 23-90 (INCLUSIONARY HOUSING). A permanent certificate of occupancy for any #building# incorporating a #floor area# increase pursuant to this Section shall not be issued by the Department of Buildings until the issuance of a permanent certificate of occupancy for lower income housing. In addition to the requirements of Section 23-90 (~~INCLUSIONARY HOUSING~~), any units for which a #floor area# increase has been earned pursuant to Section 23-90 shall be within the #Special Clinton District#.
- (b) For any #development# located within the Eighth Avenue Perimeter Area set forth in Section 96-202 (Special regulations for Eighth Avenue Perimeter Area), the #floor area ratio# permitted by the underlying district may be increased pursuant to the provisions of Section 81-21 (Floor Area Regulations) as set forth in Article VIII, Chapter 1 (Special Midtown District).

96-22

Special Permit for Modification of Height and Setback Regulations

Except within the Eighth Avenue Perimeter Area set forth in Section 96-202, ~~t~~The City Planning Commission, by special permit ~~after public notice and hearing and subject to Board of Estimate action,~~ may permit modification of height and setback regulations for #developments# which have generated an increase in the #floor area ratio# of not more than 2.0 under the provisions of Section 96-21, provided that such modification is necessary to achieve better site planning.

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

\* \* \*

#### 96-52496-52

#### Bulk ~~m~~Modifications for ~~p~~Public ~~p~~Parking ~~g~~Garages

Except within the Eighth Avenue Perimeter Area set forth in Section 96-202, ~~in~~ in all other C6 Districts, the City Planning Commission, by special permit ~~after public notice and hearing and subject to Board of Estimate action,~~ may permit for #public parking garages#, modification of the applicable #lot coverage#, #yard# and height and setback regulations. As a condition of permitting such modifications, the Commission shall make the following findings:

- (a) that because of site limitations, such modifications are necessary for the proper design and operation of the #public parking garage#; and
- (b) that such modifications will not unduly obstruct access to light and air in the #street# or on adjacent #zoning lots#.

The Commission shall consider the characteristics of surrounding development and may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of adjacent areas.

\* \* \*

#### 96-60

#### SPECIAL PERMIT PROCEDURE

#### 96-601

#### Requirements for applications

An application to the City Planning Commission for the grant of a special permit under the provisions of this Chapter, shall include a site plan showing the location and proposed #use# of all #buildings or other structures# on the site, the location of all vehicular entrances and exits and off-street parking spaces, and such other information as may be required by the City Planning Commission.

Notwithstanding the foregoing, in the Eighth Avenue Perimeter Area all applications made pursuant to the Special Midtown District shall be subject to the guidelines and provisions of Article VIII, Chapter 1 (Special Midtown District) instead.

All applications relating to Section 96-52 (Off-Street Parking Regulations) shall be referred by the Commission to the Department of Transportation for its report with respect to the anticipated traffic congestion resulting from such special permit #use# in the proposed location.

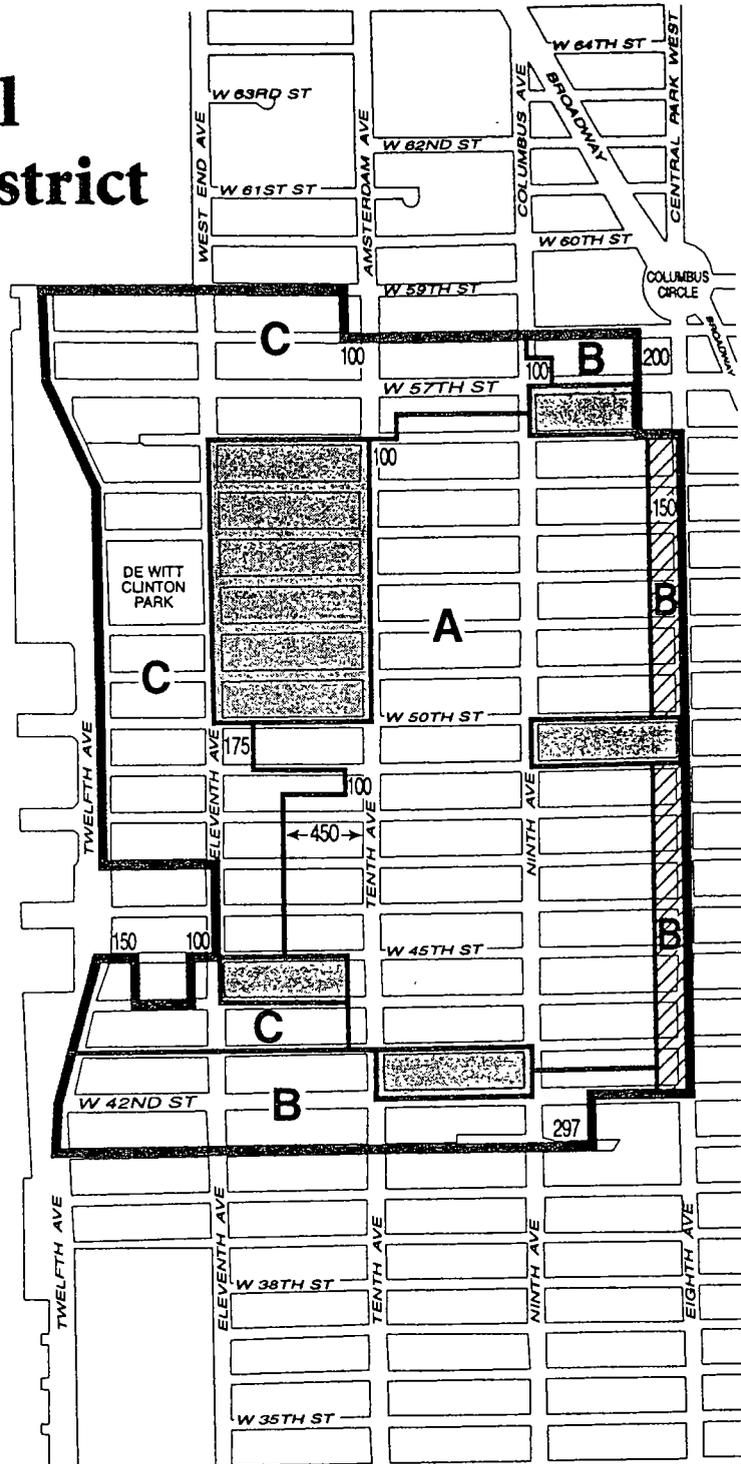
If such agency shall report thereon within one month from the date of referral, the Commission shall, in its determination, give due consideration to such report and, further, shall have the power to substantiate the appropriate findings solely on the basis of the report by such agency with respect to the issues referred. If such agency does not report within one month, the Commission may make a final determination without reference thereto.

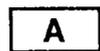
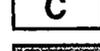
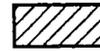
\* \* \*

APPENDIX A  
SPECIAL CLINTON DISTRICT MAP (Revised Map)

(END)

# Special Clinton District



-  District Boundary
-  Preservation Area
-  Perimeter Area
-  Other Area
-  Excluded Area
-  Subject to regulations set forth in Article VIII, Chapter I (Special Midtown District)

The above resolution (N 980271 ZRM), duly adopted by the City Planning Commission on June 3, 1998 (Calendar No. 23), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**JOSEPH B. ROSE**, Chairman  
**VICTOR G. ALICEA**, Vice-Chairman  
**ALBERT ABNEY, ANGELA M. BATTAGLIA, IRVVIN G. CANTOR, P.E.,**  
**KATHY HIRATA CHIN, ESQ., ALEXANDER GARVIN, ANTHONY I. GIACOBBE, ESQ.,**  
**WILLIAM J. GRINKER, JACOB B. WARD, ESQ.**, Commissioners

**AMANDA M. BURDEN, A.I.C.P., BRENDA LEVIN**, Commissioners, voting no

**EDWARD T. ROGOWSKY**, Commissioner, abstaining.