



IN THE MATTER OF an application submitted by NBT Victory Development LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 6a, changing from a C4-4A District to a C4-7 District property bounded by Fifth Avenue, East 126th Street, a line 85 feet easterly of Fifth Avenue, and East 125th Street/Dr. Martin Luther King Jr. Boulevard, Borough of Manhattan, Community District 11, as shown on a diagram (for illustrative purposes only) dated June 5, 2017, and subject to the conditions of CEQR Declaration E-435.

This application for a proposed amendment to the Zoning Map was filed by NBT Victory Development LLC (the applicant) on May 30, 2017. The proposed zoning map amendment, in conjunction with the related actions, would facilitate development of a new 20-story mixed-use building comprising new performance space for the National Black Theater (NBT), mixed-income housing and retail space. The project site is located in East Harlem, Manhattan Community District 11.

RELATED ACTIONS

In addition to the proposed zoning map amendment (C 170442 ZMM) that is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

N 170443 ZRM Zoning text amendment to establish a new sub-district within the Special 125th Street District and to designate a Mandatory Inclusionary Housing (MIH) area.

C 170444 ZSM Special permit to waive required accessory parking spaces within an income-restricted residential development.

BACKGROUND

The applicant seeks approval of a zoning map amendment to rezone property located at 2031-2033 Fifth Avenue (Block 1750, Lot 1) from a C4-4A district to C4-7 district. The proposed action, in conjunction with the related actions, would facilitate a new mixed-use development project in East Harlem comprising mixed-income housing, new retail space and new performance space for the National Black Theater (NBT).

The NBT has operated in Harlem for more than 50 years. It was founded in 1968 by the late Dr. Barbara Ann Teer, a widely acclaimed visionary, artist and entrepreneur. The NBT is among the oldest Black theaters in the country, and among the longest owned and operated by a Black woman. NBT was the first organization to establish a revenue-generating Black art complex in Harlem, located at 2031 Fifth Avenue, its current location.

The project site, which is owned by the NBT, is located on the east side of Fifth Avenue, between East 125th and East 126th streets. The site has 16,986 square feet of lot area and is currently developed with a two-story commercial building containing retail and commercial office space (approximately 35,954 square feet) and performance space (approximately 27,979 square feet) operated by NBT. In total, the project area is currently developed with approximately 63,933 square feet of floor area. Along Fifth Avenue, the sidewalk along the project site is 30 feet wide; along 125th Street, the sidewalk is 20 feet wide. The existing NBT theater complex would be demolished to facilitate the proposed development. During construction, the NBT would operate from satellite locations in Harlem.

The surrounding area is predominantly residential in character, with a mix of three- and four-story brownstones, community facilities and scattered vacant lots. Along 125th Street, most buildings are built to the street line, providing a consistent street wall of varying height. Between St. Nicholas and Fifth avenues, 125th Street is anchored by prominent cultural venues such as the Apollo Theater and the Studio Museum in Harlem. 125th Street also has several tall structures including the Harlem State Office Building, at West 125th Street and Adam Clayton Powell Jr. Boulevard (20 stories; approximately 250 feet); the landmarked Theresa Towers, at Adam Clayton Powell, Jr. Boulevard (13 stories, approximately 160 feet); and 55 West 125th Street (15 stories,

approximately 163 feet). The Harlem USA center, with destination retail and a movie theater, is also on 125th Street, at Frederick Douglass Boulevard. There are also many smaller buildings, the majority of which are between three and four stories high. One-story retail buildings are found on the south side of 125th Street, between Malcolm X Boulevard/Lenox Avenue and Frederick Douglass Boulevard.

East of Fifth Avenue, 125th Street is predominantly low-scale. Five- and six-story residential buildings are found on 125th Street between Madison and Fifth Avenues. East of Madison Avenue, 125th Street has few residential buildings. Here the street is characterized by commercial buildings such as Gotham Plaza, located at Lexington Avenue and East 125th Street, and community facility uses such as the Northern Manhattan Nursing Home and the Salvation Army Community Center, located at Third Avenue and East 125th Street.

The project site and surrounding area are located within a Transit Zone, and are well-served by mass transportation. The Metro-North Railroad's Harlem–125th Street station is located at Park Avenue and East 125th Street, two blocks east of the site. Access to the A, B, C and D subway lines is four blocks west of the site, at St. Nicholas Avenue and West 125th Street. The 2 and 3 lines can be accessed one block west of the site, at Malcolm X Boulevard/Lenox Avenue and West 125th Street. The 4, 5, and 6 subway lines can be accessed at Lexington Avenue and East 125th Street, three blocks east of the site. The first phase of the Second Avenue subway (to 96th Street) has been completed, and its second phase will extend to 125th Street and terminate at Lexington Avenue and East 125th Street. 125th Street is also served by several bus lines, including the M60 bus, which runs from 125th Street to LaGuardia Airport, and the M35 bus that connects Manhattan to Randall's and Ward islands. 125th Street provides direct access to the Robert F. Kennedy Bridge (formerly the Triborough Bridge), Harlem River Drive and Willis Avenue Bridge, all of which are located five blocks east of the proposed project site.

The project area is located within the Special 125th Street District, which was approved by the City Planning Commission in 2008 (N 080099A ZRM, C 080100A ZMM)). The Special 125th Street District includes 24 blocks in East, Central and West Harlem, within an area generally bounded by 124th Street, 126th Street, Broadway and Second Avenue. The special district is part of a city

initiative to strengthen and support 125th Street's role as an arts and entertainment corridor and regional business district.

The project site is currently mapped with a C4-4A zoning district, which allows residential, commercial and community facility uses up to a floor area ratio (FAR) of 4.0. In C4-4A districts, buildings may have a street wall of 40 to 65 feet, after which a minimum setback of 10 feet is required. The maximum building height is 85 feet. Parking is required for 50 percent of residential units, but may be waived or reduced for small lots or for affordable housing developments.

The Special 125th Street District provides for use of an arts bonus, which provides zoning incentives for the creation of nonprofit visual or performing arts spaces within new developments. The bonus is available in C4-7, C6-3 and C4-4D districts within the special district. The proposed development would be the first to use the arts bonus.

The arts bonus mechanism allows four square feet of bonused floor area for every one square foot of floor area provided for unfinished (i.e., "core and shell") visual or performing arts space within the bonused development, up to the maximum permitted FAR in C4-7, C6-3 and C4-4D districts. The space for visual and performing arts provided through the arts bonus must be occupied by qualifying not-for-profit visual and performing arts uses (e.g., non-profit galleries, performance and rehearsal spaces, or historical exhibits).

A minimum of 60 percent of the total floor area of the visual or performing arts space must be occupied by a qualifying primary use. Accessory educational, rehearsal or administrative office uses in such bonused space is limited to a maximum of 25 percent of the total floor area of the visual or performing arts space. Other space such as dressing rooms, lobbies, ticket offices, rest rooms and circulation space is also limited to a maximum of 25 percent of the total floor area of the visual or performing arts space.

The proposed development is a 20-story, 240-foot-tall building that would have an 85-foot base and 15-foot setbacks along 126th Street, and 10-foot setbacks along Fifth Avenue and 125th Street. The project would have 203,128 square feet of floor area (11.96 FAR), including 148,827 square

feet (8.76 FAR) for residential use, 24,951 square feet (1.47 FAR) for retail use, and 26,900 square feet (1.58 FAR) for the NBT. The ground floor and cellar would contain retail use and storage space, respectively. The ground floor would also include the primary NBT lobby facing Fifth Avenue (at a point approximately 100 feet north of 125th Street), retail entrances on all three street frontages, and a residential entrance on 126th Street. The NBT would occupy the second, third and fourth floors, including a double-height Theatre in the Round, the Black Box Theater, classrooms and offices. 240 residential units would be located on the fifth through 20th floors, of which 72 units would be made permanently affordable through MIH.

To facilitate the proposed development, the applicant requests approval of a zoning map amendment, a zoning text amendment, and a special permit.

Zoning Map Amendment (C 170442 ZMM)

The applicant seeks to rezone the project site from C4-4A to C4-7. C4-4A districts allow residential, commercial and community facility uses up to 4.0 FAR, within a medium-density contextual building envelope. Through the proposed zoning text amendment below, the requested C4-7 district would allow residential development up to 9.0 FAR with MIH, bonusable to 12 FAR with the visual and performing arts bonus. Commercial development would be allowed up to 10.0 FAR, bonusable to 12.0 FAR with the arts bonus. The requested zoning map amendment would increase the maximum allowable residential density from 4.0 FAR to 12.0 FAR, which would enable the proposed build program and facilitate the development of mixed-income housing, including affordable housing, while enabling the applicant to finance, build and support modern performance space.

Zoning Text Amendment (N 170443 ZRM)

The applicant seeks approval of the following proposed zoning text amendments to the Special 125th Street District (Article IX, Chapter 7):

Creation of a new sub-district: The proposed zoning text amendment would create a new sub-district, Subdistrict A, within the Special 125th Street District to apply special floor area, height and setback, and ground floor design regulations. The proposed sub-district, to be rezoned from C4-4A to C4-7, would extend from 125th Street to 126th Street and a point 100 feet east of Fifth

Avenue. Within the Special 125th Street District (except the southwest corner of 125th Street and Park Avenue), C4-7 districts have a maximum building height of 195 feet. Consequently, the existing C4-7 building envelope would constrain the applicant's ability to provide the necessary interior volume and space needed for the proposed performance venue, and to provide affordable housing, as required under MIH. Within the proposed sub-district, the maximum base height would continue to be 85 feet (as currently allowed), and the maximum building height would be increased to 245 feet. The existing special district street wall setback requirements along 125th Street would also be modified from 15 feet to 10 feet to be more consistent with city-wide regulations and to allow MIH developments to achieve more efficient residential floor plates. The requested sub-district height and setback regulations would establish a more viable building envelope for projects taking advantage of the arts bonus and MIH floor area.

Modification of glazing, transparency and accessory signage regulations: The applicant seeks to modify the Special 125th Street District's glazing and transparency regulations to allow portions of the proposed building's façade to be opaque. Under current special district regulations, the street wall along 125th Street and the section of Fifth Avenue within 100 feet of 125th Street must meet specific transparency and glazing requirements: 70 percent of the façade must be glazed, of which 50 percent must be transparent. The proposed development site has 200 feet of frontage on Fifth Avenue and 85 feet of frontage on 125th Street. Historically, the NBT's larger performance spaces are the Theatre in the Round and the Black Box Theater. These spaces are generally "blind spaces" without windows. The applicant seeks modification of the glazing requirements for the second – fourth floors along the project's Fifth Avenue façade, behind which the performance space would be located. The ground floor glazing requirement for Fifth Avenue and the glazing requirement for 125th Street would not be changed. The proposed zoning text amendment would enable the applicant to accommodate the design needs of the proposed theater space.

Under the special district regulations, marquee signs are not permitted for performance venues not fronting on 125th Street. The proposed marquee sign for the NBT would be placed above the theater's main entrance on the Fifth Avenue frontage, at a point approximately 100 feet north of 125th Street. The proposed zoning text amendment would enable the applicant to place the marquee sign at the desired location on Fifth Avenue.

MIH area: The applicant also proposes to designate the rezoning area as an MIH area. As proposed, the applicant seeks to use Option 1, which would have 25 percent of the total residential floor area to remain permanently affordable for families with incomes that average 60 percent of Area Median Income (AMI); or Option 2, which would have 30 percent of total residential floor area to remain permanently affordable for families with incomes that average 80 percent of AMI. The applicant anticipates that the proposed project will provide up to 72 units, as per MIH.

ZR 74-533 Special Permit (C 170444 ZSM)

The applicant requests the grant of a special permit pursuant to Section 74-533 of the Zoning Resolution to waive the required number of accessory parking spaces. In R10 residential districts (and their commercial equivalents, such as the proposed C4-7 district), pursuant to Section 25-23 of the Zoning Resolution, the required number of off-street accessory parking spaces is 40 percent of the total non-income restricted residential units. However, zoning regulations provide relief from this requirement for residential developments within the Transit Zone. The proposed development would require 72 spaces for the non-income restricted units. The parking would need to be placed below-grade, which would be expensive to build and would divert funds that could be used to provide affordable housing. Accordingly, the applicant is seeking to waive all required accessory parking spaces to avoid the expense of constructing a multi-level subsurface parking garage that would be required within the footprint of the proposed building.

In addition, the applicant will be seeking a future Chairperson's Certification for the arts bonus under Section 97-423 of the Zoning Resolution.

ENVIRONMENTAL REVIEW

This application (C 170442 ZMM), in conjunction with the applications for the related actions (N 170443 ZRM and C 170444 ZSM), 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 17DCP134M. The Lead Agency is the City Planning Commission.

After a study of the potential impacts of the Proposed Actions in the Environmental Assessment Statement (EAS), a Negative Declaration was issued on June 5, 2017. The Revised Negative Declaration includes an (E) designation (E-435) to avoid the potential for significant adverse impacts related to hazardous materials, air quality, and noise. The text for the (E) designation related to hazardous materials is as follows:

Task 1-Sampling Protocol

The applicant submits to OER, for review and approval, a Phase I of the site along with a soil, groundwater and soil vapor testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented. If site sampling is necessary, no sampling should begin until written approval of a protocol is received from OER. The number and location of samples should be selected to adequately characterize the site, specific sources of suspected contamination (i.e., petroleum based contamination and non-petroleum based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

Task 2-Remediation Determination and Protocol

A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If remediation is indicated from test results, a proposed remediation plan must be submitted to OER for review and approval. The applicant must complete such remediation as determined necessary by OER. The applicant should then provide proper documentation that the work has been satisfactorily completed.

A construction-related health and safety plan should be submitted to OER and would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil, groundwater and/or soil vapor. This plan would be submitted to OER prior to implementation.

With the assignment of the above-referenced (E) designation for hazardous materials, the Proposed Actions would not result in significant adverse impacts.

The (E) designation text related to air quality is as follows:

Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack is located at the highest tier or 243 feet above grade to avoid any potential significant adverse air quality impacts.

With the measures specified above, the Proposed Actions would not result in any significant adverse impacts related to air quality.

The (E) designation text related to noise is as follows:

To ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed-window condition with a minimum of 33 dBA window/wall attenuation along the southern façade and a minimum of 28 dBA on all other façades to maintain an interior noise level of 45 dBA. To maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

With the attenuation measures specified above, the Proposed Actions would not result in any significant adverse impacts related to noise.

UNIFORM LAND USE REVIEW

This application (C 170442 ZMM), in conjunction with the application for the related action (C 170444 ZSM), was certified as complete by the Department of City Planning on June 5, 2017, and was duly referred to Community Board 11 and the Manhattan Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related application for a zoning text amendment (N 170443 ZRM), which was referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 11 held a public hearing on this application (C 170442 ZMM) on August 9, 2017, and on that date, by a vote of 30 in favor, none opposed, and with one abstention, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application (C 170442 ZMM) was considered by the Manhattan Borough President, who issued a recommendation approving the application on September 14, 2017. The Borough President's recommendation expressed concerns about recent applications that would grant significant increases in bulk and height without certainty in regard to final program and design, and encouraged the National Black Theater development team to return to the Community Board and the Borough President's Office when their program and building design is more settled.

City Planning Commission Public Hearing

On September 6, 2017 (Calendar No. 11), the City Planning Commission scheduled September 19, 2017, for a public hearing on this application (C 170442 ZMM) and the related actions. The hearing was duly held on September 19, 2017 (Calendar No. 28), in conjunction with the applications for the related actions.

Five speakers testified in favor of the application, including the applicant's attorney, the project architect, a representative of the developer, the chair of Community Board 11, and a representative from the NBT.

The applicant's attorney described the project, its chronology and the requested actions. He provided detail on the requested modification of the Special 125th Street District glazing and transparency requirements for the project's Fifth Avenue frontage above the ground floor, and said that the applicant would seek the grant of a Chairperson's Certification for the arts bonus in a follow-up action.

The project architect gave an overview of the proposed building's massing, height and scale, and described why the requested actions were needed to enable a more flexible building envelope that could accommodate the proposed theater space and affordable housing. He also spoke about why the requested modifications of the glazing requirements above the ground floor along Fifth Avenue were necessary.

A representative from the NBT spoke about how the proposed project would spur economic development, expand cultural activity and promote commerce along the eastern portion of 125th Street.

A representative from the NBT's development partner for this project described how the ground floor commercial space could be programmed and tenanted. She stated that the retail space would have a synergistic relationship with the other uses in the proposed building.

The chair of Community Board 11 said that the NBT has provided space to the Board for various meetings and to the community for a wide range of community activities. She described the Board's strong support for this project but expressed concern that there are no specific plans available for review at this time. She expressed confidence that the NBT would continue to work with the Board as the project advances.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the proposed zoning map amendment, in conjunction with the related actions, is appropriate.

Collectively, the requested actions would facilitate the development of new performance space for the NBT, integrated into a new 20-story mixed-use development with approximately 240 residential units, including up to 72 affordable residential units aimed at households earning up to 80 percent of the AMI; approximately 25,000 square feet of retail space and approximately 27,000 square feet of performance and related rehearsal space.

The Commission commends the NBT's longstanding commitment to the Harlem community and to the City. Its core mission remains the same today as it was at the time of its founding: to produce theatrical experiences that enhance African American cultural identity by telling authentic stories of the Black experience. The NBT serves as a means to educate, enrich, entertain, empower and inform its audience about current social justice issues and continues to provide space for artists to articulate the complexity and beauty of their experience through theater.

The proposed zoning map amendment is appropriate. The requested C4-7 district allows residential development up to 9.0 FAR with MIH, bonusable to 12.0 FAR with the visual and performing arts bonus. The requested zoning map amendment would increase the maximum allowable residential density from 4.0 FAR to 12.0 FAR, which supports the applicant's proposed build program for the site and facilitates the development of mixed-income housing, including affordable housing under MIH, while enabling the applicant to finance, build and support modern performance space.

The Commission notes that this would allow the first use of the Special 125th Street District's arts bonus since its approval in 2008. The arts bonus provides a zoning incentive for the creation of nonprofit visual or performing arts spaces within new development. It requires that the applicant provide detailed drawings of the proposed performance space (to be reviewed jointly by the Department of Cultural Affairs (DCLA) and the Department of City Planning), that the NBT create a community engagement plan, and that the NBT work with DCLA to convene a local arts advisory council comprising representatives from DCLA, Community Board 11 and the Councilmember from the 9th Council District. At the public hearing, the applicant stated that, in a follow-up action, it would seek a Chairperson's certification for the arts bonus and that it was currently working with DCLA to create a local arts advisory council. The Commission believes that the art bonus will help advance the goals of the proposed project and applauds the applicant in its efforts to further engage the community.

The requested zoning text amendment to the Special 125th Street District (Article IX, Chapter 7) is appropriate. The proposed sub-district would establish a more viable building envelope for projects taking advantage of the arts bonus and MIH floor area.

Regarding marquee signs, the Commission is aware that such signs are not permitted for performance venues not fronting on 125th Street. The proposed marquee sign would be placed above the theater's proposed main entrance on Fifth Avenue, at a point approximately 100 feet north of 125th Street. The Commission notes that the NBT's current entrance is on Fifth Avenue, and that the proposed marquee sign would be placed in the same general location. The Commission notes that the Fifth Avenue sidewalk is 30 feet wide and can accommodate significant pedestrian volume. Accordingly, the Fifth Avenue entrance to the new theater is appropriate and the Commission believes that the proposed zoning text amendment would enable the applicant to place the marquee sign at the desired location on Fifth Avenue.

The applicant seeks to modify the Special 125th Street District's glazing and transparency regulations to allow portions of the proposed building's façade to be opaque. During its review, the Commission raised concerns about the glazing along Fifth Avenue, especially along the ground floor. When enacted in 2008, the Special 125th Street District glazing requirements were intended to ensure that ground floor spaces be highly glazed and transparent to preclude the placement of blank walls and dark, opaque and screened ground floor spaces, to activate the street and to improve the pedestrian experience along 125th Street. In response, the applicant stated at the public hearing that it would only seek modification of the glazing requirements for the second through fourth floors along the project's Fifth Avenue facade, behind which the performance space would be located. The ground floor glazing requirement for Fifth Avenue and the glazing requirement for 125th Street would not be changed. The proposed zoning text amendment would enable the applicant to accommodate the design needs of the proposed theater space. The details of any proposed modification of the glazing requirements will be provided with the application for certification of the arts bonus.

The designation of an MIH area is appropriate. The zoning text amendment complements the

related requested actions and ensures that the proposed project expands and provides additional affordable housing in East Harlem.

The Commission believes that the requested parking waiver pursuant to Section 74-533 is appropriate. Given the proposed development site's access to local and regional mass transit, the Commission believes that the requested waiver on the number of required accessory spaces will facilitate the creation of affordable housing by reducing the costs associated with providing the amount of parking that would otherwise be required.

The Commission believes that the proposed project complements the overall vision for the Special 125th Street District and will help to rejuvenate the eastern portion of the 125th Street corridor and complement new residential development proposed for neighboring blocks. It will facilitate the creation of new modern cultural and performance space for the NBT while recognizing its importance and legacy to the Harlem community. Moreover, it will expand opportunities for mixed-income affordable housing and reactivate retail activity along the Fifth Avenue frontage. Accordingly, the Commission believes that the requested zoning map amendment, in conjunction with the related requested actions, is appropriate.

The Commission encourages the applicant to return to the Community Board and the Borough President's Office when its program and building design is more settled, and prior to seeking certification of the arts bonus.

RESOLUTION

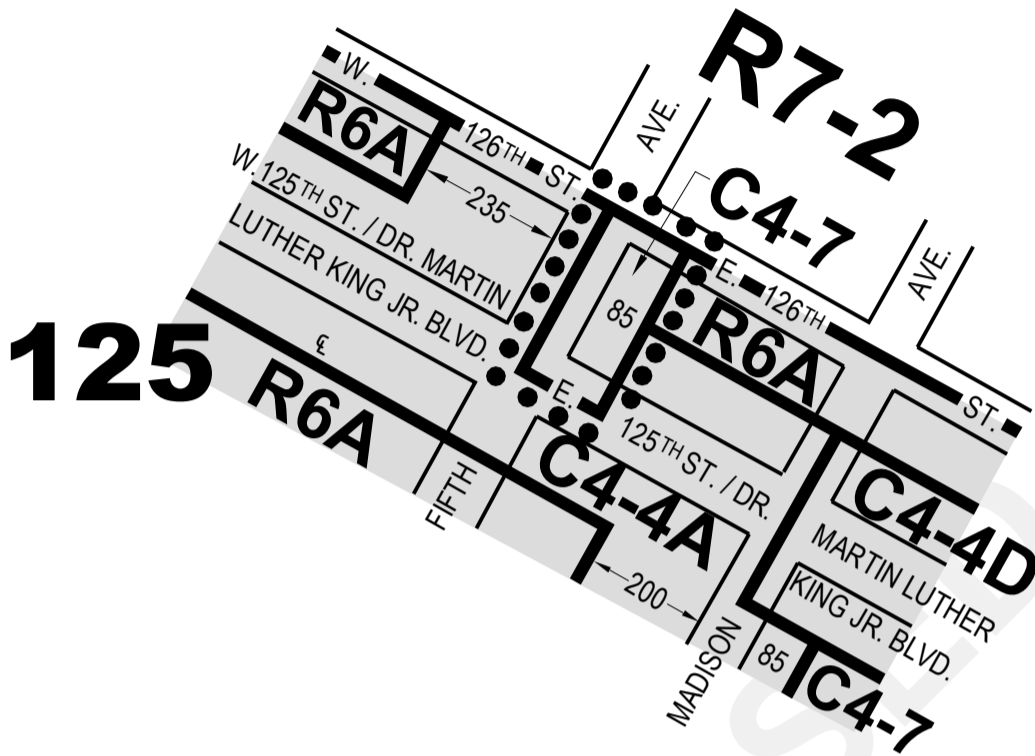
RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment, and be it further

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 hereby amended by changing the Zoning Map, Section No. 6a, from a C4-4A District to a C4-7 District property bounded by Fifth Avenue, East 126th Street, a line 85

feet easterly of Fifth Avenue, and East 125th Street/Dr. Martin Luther King Jr. Boulevard, Borough of Manhattan, Community District 11, as shown on a diagram (for illustrative purposes only) dated June 5, 2017, and subject to the conditions of CEQR Declaration E-435.

The above resolution (C 170442 ZMM), duly adopted by the City Planning Commission on October 18, 2017 (Calendar No. 17), 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.

MARISA LAGO, *Chair*
KENNETH J. KNUCKLES, *Esq.*, *Vice-Chairman*
RAYANN BESSER, ALFRED C. CERULLO, III,
MICHELLE DE LA UZ, JOSEPH I. DOUEK,
RICHARD W. EADDY, CHERYL COHEN EFFRON,
HOPE KNIGHT, ANNA HAYES LEVIN,
ORLANDO MARIN, LARISA ORTIZ *Commissioners*

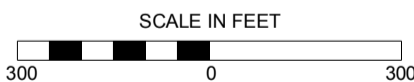


CITY PLANNING COMMISSION
 CITY OF NEW YORK
 DIAGRAM SHOWING PROPOSED
ZONING CHANGE
 ON SECTIONAL MAP
6a

New York, Certification Date
 JUNE 05, 2017

BOROUGH OF
MANHATTAN

S. Lenard, Director
 Technical Review Division



NOTE:

- Indicates Zoning District Boundary.
- ● ● ●** The area enclosed by the dotted line is proposed to be rezoned by changing a C4-4A District to a C4-7 District.
- 125** Indicates a Special 125th Street District (125).



Diane Collier
Chair

Angel D. Mescain
District Manager

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August 16, 2017

Marisa Lago
Director
New York City Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Re: Recommendation on ULURP Application Nos. C 170442 ZMM and C 170444 ZSM

Dear Director Lago,

On August 9, 2017, Community Board 11 (CB11) held a public hearing and voted on land use application, C 170442 ZMM and C 170444 ZSM, submitted by NBT Victory Development LLC (“the applicant”) with respect to a proposed mixed-use development project to be built at 2031-2033 Fifth Avenue (Block 1750, Lot 1) between 125th Street and 126th Street in the East Harlem neighborhood of Manhattan.

The applicant seeks to develop a mixed-use building consisting of residential, retail and theater uses. The residential component of this proposed project would be compliant with Mandatory Inclusionary Housing (MIH) and consist of a maximum of 240 units, comprised of 88 studios, 141 one-bedrooms, and 11 two-bedrooms. The theater component would provide a new home for the National Black Theatre (NBT) which is currently located at the proposed development site. The commercial component would include office uses for NBT as well as ground floor retail space along 125th Street and Fifth Avenue.

The land use actions requested in this Application include a zoning map change from C4-4A (4.0 FAR) to C4-7 (10 FAR), zoning text amendments to the Special District, a zoning text amendment to map a MIH designated area on the Development Site, and a special permit to waive accessory residential parking requirements.

The Applicant anticipates the submission of a follow-up application for a Chairperson’s certification for a Visual or Performing Arts (VPA) bonus for the National Black Theater under the Special District text. This application will follow the instant Application because several steps need to be completed, including but not limited to establishment of a Local Arts Advisory Council (LAAC), confirmation of the sources of funding, and advancement of the design of the theater.

Our board thoughtfully considered this project since June ULURP notification and hosted several presentations by the development team during our summer hiatus in July and August to reach the recommendation in our submission.

Project Description

The Proposed Building contains 203,128 square feet of floor area (11.96 FAR), including 148,827 (8.76 FAR) for residential use, 24,951 (1.47 FAR) for retail use, and 26,900 (1.58 FAR) for the NBT. The proposed 20-story, 245 foot tall building has an 85 foot tall base and 15 foot setbacks along 126th Street, and 10 foot setbacks along Fifth Avenue and 125th Street.

The cellar contains retail use and storage and the ground floor includes the primary NBT lobby facing Fifth Avenue, retail entrances on all three street frontages, and a residential entrance on 126th Street. The second floor is devoted to approximately 16,000 square feet of retail. The NBT occupies the third and fourth floors, including a double-height theater in the round, a black box theater, classrooms and offices. Two hundred forty residential units are located on the fifth through twentieth floors.

Actions Necessary to Facilitate the Project

The Special 125th Street District was adopted in 2008. At that time, there was no development proposal for the Development Site and an upzoning was deferred at the National Black Theatre's request. Now, with a conceptual design and a commitment for a permanent new home for the NBT, the following actions are requested:

Zoning Map Amendment

The proposed zoning map amendment from C4-4A to C4-7 consistent with the goals of the Special District and the City's policies with respect to bulk, density and affordable housing.

Zoning Text Amendments

The proposed text changes seek to fine-tune the Special District to reflect changes in the Zoning Resolution and to facilitate the Proposed Project. It should be noted that since the Special District's adoption, no VPA space has been provided.

The text amendments would allow NBT's marquee, signage and entrance to be located on Fifth Avenue, their historic location as Fifth Avenue is better suited to accommodate the queuing of NBT patrons than 125th Street.

Modification of glazing, transparency and accessory signage regulations on 125th Street would allow portions of the façade to be opaque. Historically, NBT's larger performing art spaces are the Theatre in the Round and the Black Box Theater. These spaces are generally "blind spaces" without windows. The building and envelop design, in conjunction with the signage and marquees, will take the place of windows in maintaining and attracting pedestrian interest.

A new Sub-district A would be created within the Special District, extending from 125th Street to 126th Street and Fifth Avenue to 100 feet east of Fifth Avenue. Within the Sub-district, the maximum base height remains 85 feet, the maximum building height is 245 feet, and the setbacks are 15 feet on 126th Street and 10 feet on Fifth Avenue and 125th Street. This establishes a viable building envelope for projects taking advantage of the MIH floor area.

A new certification by the Chairperson of CPC would allow the location of entrances to loading berths to be modified. Currently, the Zoning Resolution requires an entrance to be at least 30 feet from a residence district and 50 feet from an intersection, while the Special District prohibits entrances along 125th Street and 5th Avenue. This leaves only the 126th Street frontage. At 85 feet in length, only five feet of this frontage could accommodate a loading dock, which is not viable. The certification will allow the CPC

Chairperson to permit the location of loading berth entrances within 30 feet of a residential district boundary where certain findings are met.

Finally, an amendment to Appendix F of the Zoning Resolution would map the Development Site as an MIH Designated Area.

Zoning Special Permit

The Proposed Project will provide up to 72 affordable dwelling units, depending on the MIH affordability option pursued (i.e., 20%, 25% or 30%). These units do not require accessory parking because the Proposed Project is located in the Transit Zone. The remaining market-rate dwelling units are subject to a 40 percent parking requirement (68 to 77 spaces). Underground parking for these automobiles would require a two-level garage entered on 126th Street. The special permit, if granted, would waive the requirement for these spaces.

Conclusion

As proposed, the National Black Theatre (NBT) project will create affordable housing, a permanent new home for a treasured cultural institution and retail space along an important commercial corridor. The project will ensure NBT, a minority owned business, will retain ownership in development partnership, provide financial sustainability for the theater, continue available spaces for community events and expand cultural activity on 125th towards the East. Each of these factors are welcome benefits to our community. We are particularly pleased that the project advances the Arts and Culture goals of the East Harlem Neighborhood Plan, and the 2008 125th Street Corridor Rezoning.

Additionally, while we are pleased that the project's cross subsidy goals include new affordable housing, we encourage the developer to maximize the number of affordable units and review home ownership options that reflect the needs of our community as it relates to local household incomes and family sized units.

We look forward to continuing dialogue with the development team to ensure their commitments to the East Harlem community are honored as the project proceeds in the ULURP process.

Community Board Recommendation

Community Board 11 (CB11) recommends approval of ULURP Application Nos. C 170442 ZMM and C 170444 ZSMZSM.

Full Board Vote: 30 in favor; 1 abstained

If you have any questions regarding our recommendation, please contact Angel Mescain, District Manager, at 212-831-8929 or amescain.cb11@gmail.com.

Sincerely,



Diane Collier
Chair
Community Board 11

cc: Hon. Bill Perkins, New York City Council (via email)
Hon. Brian Benjamin, New York State Senate (via email)
Hon. Gale A. Brewer, Manhattan Borough President (via email)
Hon. Robert J. Rodriguez, New York State Assembly (via email)
Candy Vives-Vasquez, Community Board 11 (via email)
Judith Febbraro, Community Board 11 (via email)

Borough President Recommendation

City Planning Commission
120 Broadway, 31st Floor, New York, NY 10271
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Applications: C 170444 ZSM, N170443 ZRM, and C 170442 ZMM

Docket Description:

C 170442 ZMM

IN THE MATTER OF an application submitted by NBT Victory Development LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section 6a, changing from a C4-4A District to a C4-7 District property bounded by Fifth Avenue, East 126th Street, a line 85 feet easterly of Fifth Avenue, and East 125th Street/Dr. Martin Luther King Jr. Boulevard, Borough of Manhattan, Community District 11, as shown on a diagram (for illustrative purposes only) dated June 5, 2017 and subject to the conditions of CEQR Declaration E-435.

Borough of Manhattan, Community District 11.

(See Continued)

COMMUNITY BOARD NO: 11

BOROUGH: Manhattan

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached


BOROUGH PRESIDENT

September 13, 2017
DATE

C 170444 ZSM

IN THE MATTER OF an application submitted by NBT Victory Development LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-533 of the Zoning Resolution to waive 72 required accessory off-street parking spaces for dwelling units in a development within a Transit Zone, that includes at least 20 percent of all dwelling units as income-restricted housing units, in connection with a proposed mixed use development, on property located at 2031-2033 Fifth Avenue (Block 1750, Lot 1), in a C4-7 District, Borough of Manhattan, Community District 11.



OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

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Gale A. Brewer, Borough President

September 13, 2017

**Recommendation on ULURP Application No.'s C 170444 ZSM, N170443 ZRM, C 170442 ZMM – National Black Theater
By NBT Victory Development LLC**

PROPOSED ACTION

The National Black Theater Victory Development LLC (“NBT Victory Development LLC” or “the Applicant”), seeks: (1) a special permit pursuant to Section 74-533 of the Zoning Resolution (“ZR”) to waive 72 required accessory off-street parking spaces for dwelling units in a development within a Transit Zone¹; (2) a zoning text amendment to map a Mandatory Inclusionary Housing (“MIH”) designated area on the development site; and (3) an amendment to the Zoning Map to change a C4-4A zoning district to a C4-7 zoning district in order to facilitate the development of a 20-story mixed-used building at 2031-2033 Fifth Avenue (Block 1750, Lot 1) in a C4-4A district within the Special 125th Street District in Community District 11, Borough of Manhattan.²

Pursuant to ZR §74-533, the City Planning Commission (“CPC”), may permit a waiver of, or a reduction in, the number of required accessory off-street parking spaces for dwelling units in a development or enlargement that includes at least 20 percent of all dwelling units as income-restricted housing units as defined in Section 12-10, provided the CPC finds that such waiver or reduction:

- a) Will facilitate such development or enlargement. Such finding shall be made upon consultation with the Department of Housing Preservation and Development;
- b) Will not cause traffic congestion; and
- c) Will not have undue adverse effects on residents, businesses or community facilities in the surrounding area, as applicable, including the availability of parking spaces for such uses.

Additionally, the CPC may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

Any changes to the zoning map should be evaluated for consistency and accuracy, and given the land use implications, appropriateness for the growth, improvement and development of the neighborhood and borough. In evaluating the text amendment, the Borough President’s office

¹ The Transit Zone area of Manhattan is within the boundaries of Community Districts 9, 10, 11 and 12. The Transit Zone includes at least 20 percent of all dwelling units as income-restricted housing units, in connection with a proposed mixed-use development.

² The applicant also anticipates a Chairperson’s certification for a Visual or Performing Arts bonus for the National Black Theater under the Special District text pursuant to ZR §97-00.

must consider whether the amendment is appropriate and beneficial to the community and consistent with the goals of the MIH program.

PROJECT DESCRIPTION

The applicant seeks: (1) a zoning map change from a C4-4A district to a C4-7 district; (2) zoning text amendments to the Special 125th Street District to map a MIH designated area on the Development Site; and (3) a special permit to waive 72 off-street parking spaces to facilitate the development of a 20-story mixed use building at 2031-2033 Fifth Avenue. The applicant proposes to develop a mixed use building containing residential units, commercial retail space, and a new visual performance theater.

The project site has a total lot area of 17,000 square feet and occupies the full easterly block with 200 feet of frontage along Fifth Avenue and 85 feet of frontage between 125th and 126th Streets. The existing 3-story building consists of 74,000 total square feet of floor area with 30,000 square feet used by the National Black Theater and 34,000 square feet used for commercial office and retail use with a total floor area ratio (“FAR”) of 3.76. The applicant proposes a 245 foot tall, 203,128 square foot building consisting of 148,827 square feet of residential use, 24,951 square feet of retail use, and 26,900 square feet to be used by the National Black Theater. The applicant proposes 11.96 FAR.

Although a specific development project would not be formulated until after the completion of the ULURP, the building as currently proposed by the applicant will contain retail use and storage in the cellar, the lobby entrance for the National Black Theater is proposed on the ground floor facing Fifth Avenue and would occupy the third and fourth floors with classrooms, offices, a double-height theater and a black-box theater; the retail entrances would be accessed on all three street frontages and occupy most of the second floor; and, the residential entrance is proposed to be located on 126th Street with the 248 residential units distributed between floors 5 and 20.

Background

The National Black Theater, is a nationally recognized, non-profit cultural and educational institution and a community-based theater founded in 1968 by Dr. Barbara Ann Teer to showcase productions by and about black Americans. The National Black Theater also offers children’s programs and classes, workshops, dramatic and musical performances and lectures. The applicant acquired the development site in 1983, which was eventually conveyed in 2012, with assurances to stay on the site. This proposal is to ensure that the National Black Theater has a permanent place in the proposed building.

Following a study in 2008 by the Department of City Planning, NYC agencies, an advisory committee consisting of elected officials, civic groups, cultural institutions and Community Boards 9, 10, and 11, the Special 125th Street District was adopted. The district extends 24 blocks between Second Avenue to the east, 124th Street to the south, Broadway to the west, and 126th Street to the north and connects West, Central, and East Harlem. The purpose of this

rezoning was to preserve the special character of 125th Street by expanding the retail and commercial character of the street and to encourage the development of visual and performance arts spaces in the neighborhood. The rezoning allows for contextual development.

Area Context

The project site is located on the western boundary of the East Harlem neighborhood in Manhattan, Community Board 11. The East Harlem Neighborhood is north of the Upper East Side and generally bounded by East 96th Street to the south, Fifth Avenue to the west, East 142nd Street to the north and the Harlem River to the east. The major commercial corridors in the area are along 116th Street and 125th Street, and Second and Third Avenues. The site is located within the Special 125th District, approximately 400 feet east of the Core Sub-District. The project area is mostly surrounded by commercial/office space and residential buildings that are mostly one to two-family residential brownstones. Immediately north of the site is a multi-family walkup that lies on a block of mostly one to two-family residential brownstones. Immediately south of the site is an empty lot. West of the site are commercial and office spaces for Manhattan Legal Services and the African Day Parade office. Finally, east of the site are one to two-family residential buildings to the north and commercial and offices spaces to the south that are home to organizations like the Holy Ghost Pentecostal Church and H & M Art Gallery of Harlem. At the end of the block is Promise Academy, a charter school.

Other educational institutions in the area are the CUNY School of Public Health, Harlem Village Academy High School and the Harlem Branch of the New York Public Library. Besides the Holy Ghost Pentecostal Church, the Metropolitan Community United Methodist Church, St James and St Philip AME Church, and the Greater Calvary Baptist church are other religious institutions that within a block radius of the site. A block south of the site lies the Marcus Garvey Park.

The site's area is served by multiple modes of public transportation. The Nos. 2 and 3 subway lines are one block west of the development site at Malcolm X Boulevard and the Nos. 4, 5 and 6 subway line is located one block east of the site at Lexington Avenue. There are also bus routes along 125th Street: Bx15; M100; and M101; Additional bus lines along Fifth Avenue are: BxM3; BxM4; and M1.

Proposed Actions

In 2008 when the 125th Street Special District was adopted, an upzoning was deferred at the National Black Theater's request. Now the applicant seeks (1) a special permit pursuant to ZR Section 74-533 to waive 72 required accessory off-street parking spaces for dwelling units in a development within a Transit Zone; (2) a zoning text amendment to map an MIH designated area on the development site; and (3) an amendment to the Zoning Map to change a C4-4A zoning district to a C4-7 zoning district in order to facilitate the development of a 20-story mixed-used building at 2031-2033 Fifth Avenue.

Zoning Map Change

A Zoning Map Amendment to Zoning Map 6a requires approval by the CPC. This would change the zoning on the Project Site (Block 1750, Lot 1) from C4-4A (a residential R7A equivalent) to C4-7, a higher density residential R10 district equivalent). This will permit an increase in residential and commercial Floor Area Ratio from 4.0 to 10.0. There will be no change in permitted Use Groups.

Zoning Text Amendment

Complementary to the zoning map amendment allowing for a change in use and an increase to the permitted residential floor area ratio, a zoning text amendment to modify Appendix F of the Zoning Resolution to apply MIH requirements to the site is required.

The text amendments would also permit the National Black Theater's Marquee, signage and entrance to be located on Fifth Avenue where they have historically been located.

There is also an application for a text amendment to modify glazing, transparency and accessory signage regulations on 125th Street which would permit a portion of the façade to be opaque. The larger performance spaces, the Black Box Theater and the Theater in the Round have been historically without windows and this amendment would facilitate the continuation of that design.

Although a specific development project would not be formulated until after the completion of the ULURP and the issuance of a Commissioner's Certification granting the Visual Performance Art Bonus, it is projected that the Project Site would be developed with a new mixed-use development pursuant to the design envelope allowed by these actions.

Zoning Special Permit

The proposed project will provide up to 72 affordable dwelling units, depending on the MIH affordability option selected. Because these affordable units would not require accessory parking, the special permit sought would waive the requirement for these spaces.

COMMUNITY BOARD RECOMMENDATION

At its full board meeting on August 9, 2017, Manhattan Community Board 11 (CB11) adopted a resolution recommending approval of the application by a vote of 30 in favor and 1 abstention.

The resolution echoed the overwhelming support this project proposal has received throughout the ULURP. It stressed the importance of the fact that the National Black Theater is a minority owned business, that it will retain ownership of the theater space, and that the project will advance the Arts and Culture goals of the East Harlem Neighborhood Plan. It is also important to note that the Community Board requested that all efforts be made to maximize the number of affordable units, and it concluded with a request to keep communication lines open as a means to ensure that the commitments made to the community are kept.

BOROUGH PRESIDENT COMMENTS

For nearly five decades the National Black Theater (“NBT”) has been a cultural refuge, an incubator for Black performance art, and an educational resource in the heart of Harlem. In the 1960s Dr. Barbara Ann Teer sought to create a space where Black performance artists and theatergoers could find refuge and inspiration during a turbulent period in the nation’s history. The National Black Theater was born and became a place where stories about Black Americans by Black Americans were told to whoever wanted to listen. Dr. Teer is quoted as saying that she wanted the theater to feel like a home away from home. Throughout this ULURP process, numerous community members made it abundantly clear that Dr. Teer’s wish became reality and the theater she built has served as a home for countless visitors and patrons, over 300 original theater works, lectures, workshops, and children’s programs and classes. Now, her children are working to ensure that their mother’s legacy and the place she nurtured for her community will live on into the future. We should support that work.

The proposed project which is expected to contain ground floor retail, the new National Black Theatre on the second and third floors and residential units triggering the MIH requirements on the upper floors, will advance two important goals. First, it will secure and expand the art and cultural infrastructure in Harlem; and second, it will create much needed permanent affordable housing.

Members of my office and I have met with the applicant on multiple occasions throughout the Pre-ULURP and ULURP phases. During those conversations the applicant has informed us that it intends to create affordable units with the deepest affordability levels under the MIH program so that the units created are made affordable to the existing residents of Harlem. The applicant also provided financial documentation that had been submitted to the Department of Cultural Affairs for a city capital funding application. This is a robust process demanding a business plan and strong commitment to the cultural mission. We have since learned that the NBT was awarded \$10.5 Million in capital funding for Fiscal Year 2018 from both the Mayor and the City Council in support of the proposed Visual Performing Arts (“VPA”) development.

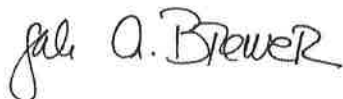
The proposed zoning map change to a C4-7 District and complementary text amendment should create a framework for a new building that is consistent with neighborhood context and with the East Harlem Neighborhood Plan’s goals of affordable housing and cultural space. The Project Area to its east and west is currently sandwiched between two C4-7 districts which permit a mix of commercial and residential uses. There are also several buildings in close proximity to the Development Site that stand between 11 stories and 19 stories in height. The proposed rezoning will provide consistency in zoning requirements by having a continuous C4-7 District along West 125th Street. In addition, it is appropriate to permit higher density on the corner of two wide thoroughfares.

I have expressed concerns about recent applications that would grant significant increases in bulk and height without certainty in regard to final program and design. And this office has commented in the past on the dangers of approving projects prematurely. We do not want a building that rises to a height not previously disclosed, one with units at affordability levels not appropriate to the neighborhood, or cultural programming space that is less prominent and visible than the application currently anticipates, even though outcomes such as these would be permitted by the proposed zoning changes.

However, here the mission driven nature of the proposal and a continued ownership stake by the non-profit gives me a level of security that I may not otherwise have. I have repeatedly advocated for such an ownership model for proposals pursuing affordable housing and find that this model will work for cultural use and ensuring the legacy of the NBT in perpetuity. I would encourage the National Black Theater development team to return to the Community Board and the Borough President's Office when their program and building design is more settled and urge the Commission to direct them to do so.

BOROUGH PRESIDENT RECOMMENDATION

The Manhattan Borough President recommends approval of ULURP application numbers C 170444 ZSM, N170443 ZRM and C 170442 ZMM.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, slightly slanted style.

Gale A. Brewer
Manhattan Borough President