Zoning Resolution

THE CITY OF NEW YORK
Zohran K. Mamdani, Mayor

CITY PLANNING COMMISSION
Sideya Sherman, Chair

97-42 - Certification for Floor Area Bonus for Visual or Performing Arts Uses

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LAST AMENDED
12/5/2024

The Chairperson of the City Planning Commission shall certify to the Commissioner of Buildings visual or performing arts #uses# in accordance with the applicable provisions of Section 97-41, inclusive, where the following conditions have been met:

(a) Drawings have been provided that clearly designate all #floor area# permitted pursuant to the applicable provisions of Section 97-41, inclusive, including the location of such #floor area#.

(b) Drawings also have been provided that clearly designate all #floor area# or below grade floor space for any new visual or performing arts #uses# provided for the purposes of satisfying the provisions of Section 97-41, inclusive.

Such drawings shall be of sufficient detail to show that such designated space shall be designed, arranged and used for the new visual arts or performing arts #uses#, and shall also show that:

(1) all such visual or performing arts #uses# are located at or above the ground floor level of the #building#, except that performance space meeting the requirements of paragraph (b)(4) of this Section may be located below grade, and #accessory# #uses# may be located below grade, subject to the requirements of paragraph (b)(5) of this Section;

(2) all bonused #floor area# or below-grade space occupied by visual or performing arts #uses# is primarily accessed from 125th Street, except where such visual or performing arts #floor area# or floor space is provided in the Park Avenue Hub Subdistrict.

However, all bonused #floor area# or below-grade floor space occupied by visual or performing arts #uses# within a #development# may be primarily accessed from Fifth Avenue, provided the following conditions are met:

(i) the #zoning lot# must have at least 150 feet of Fifth Avenue frontage where such primary entrance is provided; and

(ii) signage that identifies the visual or performing arts #uses# shall be provided at both the primary entrance on Fifth Avenue and on 125th Street;

(3) in the case of primary rehearsal space, where such space does not consist of #accessory# #uses# subject to the requirements of paragraph (b)(4), such space:

(i) can be adapted for rehearsals or performances open to the public;

(ii) is located on the first #story# of the #building# or on any higher #story# with a ceiling height not greater than 60 feet above grade;

(iii) has a #street wall# with at least 50 feet of frontage along 125th Street, except for visual or performing arts #uses# with primary entrances provided pursuant to paragraph (b)(2)(i) of this Section. In addition, where such primary rehearsal space is provided in the Park Avenue Hub Subdistrict such #street wall# with 50 feet of frontage need not be along 125th Street;

(iv) has a minimum area of 2,000 square feet, with a floor-to-ceiling height of not less than 9 feet, 6 inches; and

(v) complies with the following glazing requirements, except for visual or performing arts #uses# with primary entrances provided pursuant to paragraph (b)(2)(i) of this Section: at least 70 percent of the total surface area of the #street wall# abutting the primary rehearsal space, measured from finished floor to ceiling shall be glazed. Furthermore, at least 90 percent of such area shall be transparent from within one foot of the finished floor level to at least eight feet above such level. For primary rehearsal spaces located at the corner of 125th Street and an intersecting #street#, the glazing requirements of this Section shall be applied separately for each #street wall#, and up to 100 feet along such intersecting #street#;

(4) for performance space which is exclusively designed and arranged for the presentation of live drama, music, dance and interactive or multidisciplinary performances open to the public, such space may be below grade provided it has a minimum area of 2,000 square feet of column-free space with a floor-to-ceiling height of not less than 16 feet;

(5) #Accessory# space

(i) For primary rehearsal spaces, no more than 25 percent of such minimum required #floor area# or equivalent below grade floor space, or such bonused #floor area# or below grade floor space shall be occupied by #uses# #accessory# to such primary rehearsal spaces. #Accessory# #uses# shall include but are not limited to educational and classroom space, administrative offices, circulation space, restrooms and equipment space;

(ii) For visual or performing arts #uses# other than a primary rehearsal space, no more than 40 percent of such minimum required #floor area# or equivalent

below grade floor space, or such bonused #floor area# or below grade floor space shall be occupied by #uses accessory# to such visual or performing arts #uses#, provided no single #accessory# #use# occupies more than 25 percent of such total minimum required #floor area# or equivalent below-grade floor space, or bonused #floor area# or below grade floor space. #Accessory# #uses# shall include but are not limited to educational and classroom space, non-primary rehearsal space, administrative offices, lobbies, circulation space, ticket offices, restrooms, dressing rooms, other backstage areas and equipment space; and

(6) Signage

(i) Signage that identifies the visual or performing arts facility shall be provided at the 125th Street entrance of the visual or performing arts facility, subject to the requirements of Section 97-30, inclusive, except where such visual or performing arts facility is provided in the Park Avenue Hub Subdistrict; and

(ii) For below grade performance space subject to the requirements of paragraph (b)(4) of this Section, such #sign#, not including any frame or surrounding element, shall be utilized for the additional purpose of informing the public regarding the program of scheduled performances in such facility, and shall be no less than two feet in width and four feet in height, and shall be installed a minimum of 2 feet, 6 inches above grade;

(c) A letter from the Department of Cultural Affairs has been submitted to the Chairperson of the City Planning Commission, certifying that:

(1) a signed lease has been provided from the prospective operator of the visual or performing arts space, or a written commitment from the owner of such space in a form acceptable to the City, if such owner is also the operator, for occupancy of such space, and its operation as a visual or performing arts space for a period of not less than 15 years, with two five-year renewal options, pursuant to an operating plan and program therefor;

(2) the proposed operator of the visual or performing arts space is a non-profit organization;

(3) the proposed operator of the visual or performing arts space has the fiscal and managerial capacity to successfully operate such space;

(4) the proposed operator of the visual or performing arts space will have a program of regularly scheduled presentations or performances that are open to the public, provided that, in the case of a visual or performing arts space that is a primary rehearsal space, a program of regularly scheduled rehearsals or performances open to the public shall be required only where the proposed operator is the principal user of the primary rehearsal space. In the event that the proposed operator is not the principal user of the primary rehearsal space and such space is made available to multiple organizations or individuals on an hourly, weekly, monthly or similar basis, the proposed operator shall allow open rehearsals or performances open to the public to be sponsored by such organizations or individuals, upon request;

(5) preliminary design plans have been provided to the Department of Cultural Affairs for the visual or performing arts space, which shall include sufficient detail regarding core, shell, structural, mechanical, electrical, plumbing and HVAC systems necessary to ensure that such visual or performing arts space will operate efficiently for its intended

use;

(6) a written commitment has been provided ensuring that there are financial resources available for the timely completion of the identified scope of work; and

(7) the proposed operator of the visual or performing arts space has a Community Engagement Plan that will effectively encourage public access and use of the visual or performing arts space, provide educational opportunities to the local community, and address new, undeveloped and/or underserved audience or participant groups. The Department of Cultural Affairs shall make its determination concerning the sufficiency of the Community Engagement Plan based upon consideration of the written recommendation of the Bonused Space Local Arts Advisory Council with respect thereto.

(d) A legal commitment by the owner has been provided:

(1) for the operator of the visual or performing arts space to submit an annual program report, describing the use of the space during the previous year, to the Chairperson of the City Planning Commission, the Commissioner of the Department of Cultural Affairs, the Manhattan Borough President, the applicable Community Board and the local Council Member; and

(2) for inspection and ongoing maintenance of the visual or performing arts space to ensure its continued availability for #use# as a visual or performing arts space. Such inspection shall be conducted every five years by a licensed engineer or architect, and a report identifying the operator utilizing the space, describing the condition of the space and identifying any maintenance or repair work necessary to ensure the physical and operational soundness of such space, and establishing 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, shall be submitted to the Chairperson of the City Planning Commission and the Commissioner of the Department of Cultural Affairs;

(e) A legal commitment by the owner has been provided for continued occupancy of all #floor area# or equivalent floor space provided for the purposes of satisfying the applicable provisions of Section 97-41, inclusive, as a visual or performing arts space only in accordance with the drawings and design plans provided pursuant to paragraphs (b) and (c)(5) of this Section, and providing further that in the event of a change of operator, the owner or operator shall obtain a new certification pursuant to this Section. An #adult establishment# #use# shall be prohibited for the life of the #development# or #enlargement#.

(1) notwithstanding the provisions of this paragraph (e), an owner shall not be in violation of such legal commitment during a grace period consisting of:

(i) six (6) months from the date the visual or performing arts space is vacated by the operator, provided owner timely notifies the Departments of City Planning and Cultural Affairs of such vacancy in accordance with the requirements of the legal commitment;

(ii) the period of review by the Chairperson of the City Planning Commission and the Commissioner of the Department of Cultural Affairs with respect to a new operator and any associated change of design or #use# requirements pursuant to this Section, provided that application for certification pursuant to this Section is made no later than the expiration of the six month period set forth in paragraph (e)(1)(i) of this Section;

(iii) any period set forth in such certification as necessary to allow for the modification of design to accommodate a new operator; and

(iv) any event of force majeure;

(2) in the event that the Chairperson of the City Planning Commission determines that the requirements for certification pursuant to this Section with respect to a change of operator and associated change of design or #use# requirements are not satisfied, the grace period set forth in paragraph (e)(1) of this Section shall thereupon apply from the date of such determination;

(f) A legal commitment by the owner has been provided that all visual arts exhibitions or presentations of live drama, music, dance, interactive or multidisciplinary performances shall be open to the public in accordance with the terms of the letter issued by the Commissioner of Cultural Affairs, pursuant to paragraph (c) of this Section;

(g) A legal commitment by the owner has been provided that, in the event of an adjudicated violation of the provisions of paragraph (e) of this Section, requiring the continued occupancy of all #floor area# or equivalent floor space provided for the purposes of satisfying the applicable provisions of Section 97-41, inclusive, as a visual and performing arts space only, the owner shall not permit the occupancy of any #floor area# in the #development# or #enlargement# which is vacant as of the date of such adjudication or thereafter, or up to the amount of the increased #floor area# permitted under Section 97-422, as applicable, until such time as the Chairperson of the City Planning Commission has determined that the visual or performing arts space is occupied in accordance with the provisions of this Section.

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 of the visual or performing arts space and their successors and assigns, a certified copy of

which shall be submitted to the Chairperson. The filing of such declaration and the posting of any bond or other security required by the Chairperson under the terms of such declaration, and receipt of a certified copy of such declaration shall be preconditions to issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement#.

The owner shall not apply for or accept a temporary certificate of occupancy for such portion of the #development# or #enlargement# identified under the terms of the declaration of restrictions as utilizing the applicable #floor area# permitted pursuant to the provisions of Section 97-41, inclusive, and the Department of Buildings shall not issue a temporary certificate of occupancy for such portion of the #development# or #enlargement#, until the Commissioner of the Department of Cultural Affairs has certified that the visual or performing arts space is substantially complete. The owner shall not apply for or accept a permanent certificate of occupancy for such portion of the #development# or #enlargement#, nor shall the Department of Buildings issue a permanent certificate of occupancy for such portion of the #development# or #enlargement#, until the visual or performing arts space has been finally completed in accordance with the approved plans and such final completion has been certified by the Commissioner of the Department of Cultural Affairs. The declaration of restrictions shall be noted on any temporary or final certificate of occupancy for the #building#. The temporary or final certificate of occupancy for any portion of the #development# or #enlargement# identified under the terms of the declaration of restrictions as utilizing the applicable #floor area# permitted pursuant to Section 97-41, inclusive, shall include the provisions of paragraph (e) of this Section, requiring the continued occupancy of all #floor area# for which a bonus has been received as a visual or performing arts space only, as a condition of occupancy of such portion of the #development# or #enlargement#.

In granting the original certification, the Chairperson of the City Planning Commission may specify such changes in design or #use# that would not warrant further certification pursuant to this Section.