CITY PLANNING COMMISSION
CITY OF NEW YORK

OFFICE OF THE CHAIR

NEGATIVE DECLARATION

June 5, 2017

Project Identification
CEQR No. 17DCP134M
ULURP Nos. 170442 ZMM, N170443 ZRM, 170444 ZSM
SEQRA Classification: Unlisted

Lead Agency
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271
Contact: Robert Dobruskin
(212) 720-3423

Name, Description and Location of Proposal:

National Black Theater
The Applicant, NBT Victory Development LLC, is seeking a zoning map amendment from a C4-4A to C4-7 district, zoning text amendments to Zoning Resolution (ZR) Article IX, Chapter 7 (Special 125th Street District), and a Special Permit pursuant to ZR Section 74-533 (Reduction of parking spaces to facilitate affordable housing) affecting a property at 2031-2033 Fifth Avenue (Block 1750, Lot 1, the "Development Site" or "Rezoning Area") in the Harlem neighborhood of Manhattan Community District 11. In addition, the Applicant is seeking a zoning text amendment to ZR Section 23-933 (Inclusionary Housing) Appendix F to establish a Mandatory Inclusionary Housing (MIH) area that would be coterminous with the Rezoning Area (collectively, the "Proposed Actions"). The Proposed Actions would facilitate a proposal by the Applicant to construct a new 241,677 gross square foot (gsf), 20-story mixed use building (the "Proposed Development") which would include 28,225 gsf of community facility floor area for the National Black Theater (NBT), 32,783 gsf of commercial floor area, and 180,669 gsf of residential floor area with 240 residential dwelling units (with 72 affordable units pursuant to MIH). The Development Site is located within the Special 125th District with frontages to East 126th Street to the North, East 125th Street to the South, Fifth Avenue to the West, and Madison Avenue to the East.

The Development Site is currently developed with a building containing 14,237 gsf of retail uses (Use Group 6), 15,505 gsf of office uses (Use Group 6), 18,423 gsf of non-profit theater and performance space for the National Black Theater (Use Group 4), and 17,529 gsf of accessory storage space, for a combined total of 65,994 gsf at an FAR of 2.84. The Development Site is currently zoned C4-4A (R7A equivalent), which is a contextual commercial zoning district allowing residential, commercial, and community facility uses at up to a 4.0 FAR. C4-4A districts permit Use Groups 1-6, 8-10, and 12. In C4-4A districts, buildings may have a street wall height of 40 to 65 feet, after which a minimum setback of 10 feet on wide streets and 15 feet on narrow streets is required, with a maximum building height of 85 feet. Parking is required for 50 percent of the residential units, but may be waived or reduced for zoning lots of less than 10,000 sf. Under the proposed rezoning, the C4-7 district (R10 equivalent) would permit a residential, commercial,

and community facility FAR of 10.0.

The Development Site is also located within the Special 125th Street District, which was established through the 125th Street Corridor Rezoning and Related Actions project (CEQR #07DCP030M) approved by the City Planning Commission in 2008. The Special District is part of a City initiative to support the ongoing revitalization of 125th Street. The 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 125th Street District permits the use of a Visual or Performing Arts (VPA) Bonus which is a zoning incentive for the creation of non-profit visual or performing arts spaces within new developments. The VPA space is required to be occupied by qualifying non-profit visual and performing arts uses. The VPA bonus mechanism allows four square feet of bonus floor area for every one square foot of floor area provided for unfinished (i.e. "core and shell") visual or performing arts districts. Of the bonus-generating VPA space, a minimum of 60 percent of the total space is required to be occupied by a qualifying primary use, such as a theater. The remaining 40 percent may be occupied by permitted accessory, or non-primary, spaces such as dressing rooms and administrative offices. Certification by the Chairperson of the City Planning Commission is required to qualify for the VPA Bonus.

The Proposed Actions include a zoning map amendment to rezone the Development Site from a C4-4A (R7A equivalent) zoning district, to a C4-7 (R10 equivalent) district. The proposed C4-7 district would permit a maximum of 12.0 FAR for residential use under MIH, and 10 FAR for commercial and community facility uses. The Proposed Actions also include a zoning text amendment to ZR Article IX Chapter 7 to establish a new Subdistrict A within the Special 125th Street District, extending from 125th Street to 126th Street and 85 feet east of Fifth Avenue, which would provide a maximum base height of 85 feet, maximum building height of 245 feet, and minimum setback requirements of 15 feet on 126th Street and 10 feet on Fifth Avenue and 125th Street. The proposed Subdistrict A would also limit the maximum residential FAR to 9.0 with MIH and the total maximum FAR to 10 for other uses, which can be increased to 12 FAR through the floor area bonus for visual or performing arts ("VPA Bonus") uses pursuant to ZR Section 97-422. The Applicant intends to pursue a Chairperson's Certification for the VPA Bonus (pursuant to ZR Section 97-423), after securing the necessary financing for a qualifying VPA space at a later date.

In addition to the establishment of a new subdistrict, the proposed zoning text amendment would allow any museums, performance spaces, and theaters along Fifth Avenue within the Special 125th Street District to erect a marquee sign on or above a marquee. Under the proposed text, the applicability of the City Planning Commission Certification under ZR Section 97-55 (Certification for Access to Required Uses) would also be expanded to Subdistrict A, for allowing a loading berth entrance closer than 30 feet to a residential district boundary if certain conditions and finding. The Proposed Actions also include a zoning text amendment to establish a MIH area, coterminous with the Development Site, and subject to the affordability requirements of Option 1 or Option 2 of the MIH program. Option 1 would require that at least 25% of the residential floor area be reserved for residents with incomes averaging 60 percent of the Area Median Income (AMI), with ten percent of the units affordable at 40 percent of the AMI. Option 2 would require that at least 30 percent of the residential floor area be reserved for residents averaging 80 percent of the AMI. Finally, the proposed Special Permit pursuant to ZR Section 74-533 (Reduction of parking spaces to facilitate affordable housing) would waive requirements for parking on the Development Site.

Upon approval of the Proposed Actions and anticipated Chairperson's Certification for the VPA Bonus, the existing building on the Development Site would be demolish. The Proposed Development would include 180,669 gsf of residential floor area, approximately 32,783 gsf of retail space (Use Group 6) on the first and second floor, and approximately 28,225 gsf of non-profit theater (and theater-support) space for the National Black Theater (Use Group 4), to be generated and developed through the VPA Bonus. The Proposed Development, as envisioned, would have 240 dwelling units, of which 72 units would be affordable. The proposed building would reach a base height of 70 feet, after which floors would be setback 15 feet until reaching a maximum height of 228 feet. The 228-foot height presumes 20 floors, but an additional floor and a maximum building height of 245 feet is requested to provide design flexibility. The lobby and primary access to the theater would be along Fifth Avenue, with a residential entrance along 126th Street and retail entrances on Fifth Avenue and 125th Street.

For the purposes of presenting a conservative environmental analysis, the Environmental Assessment Statement (EAS) considers two analysis frameworks. The first (12.0 FAR scenario) considers a mixed-use development on the Applicant-owned site, totaling 241,677 gross square feet with a height of 240 feet. The Proposed Development would consist of 180,669 gsf of residential floor area (240 units, 72 affordable), 32,783 gsf of retail floor area, and 28,225 gsf of theater and performance space floor area. The second (10.0 FAR scenario), which is assumed without the future VPA bonus, considers a smaller mixed-use development totaling 192 units (reduction of 48 units), as well as a reduction in height from 240 to 195 feet. The remainder of the building program in the 10.0 FAR Scenario is assumed to remain the same, with the theater and retail space square footages remaining constant. As such, the 12.0 FAR scenario is assumed to be the "worst case" scenario for analysis purposes.

The analysis year for the Proposed Actions is 2020. Absent the Proposed Actions, the space currently occupied by the National Black Theater would be converted to new office space, along with medical office space. The existing retail and office space would remain unchanged from the existing conditions. The overall development program in the No-Action Scenario would include a total of 65,994 gsf (same total as the existing conditions) but would be distributed as follows: 14,237 gsf of retail floor area, 30,211 gsf of office floor area 3,717 gsf of medical office floor area, and 17,529 gsf of retail floor area.

In connection with the Proposed Actions, an (E) designation (E-435) would be assigned to the Development Site (Block 1750, Lot 1) to avoid potential 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 he 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.

Statement of No Significant Effect:

The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated June 2, 2017, prepared in connection with ULURP application nos. 170442 ZMM, N170443 ZRM, 170444 ZSM. The City Planning Commission has determined that the Proposed Actions will have no significant effect on the quality of the environment.

Supporting Statement:

The above determination is based on an environmental assessment which finds that:

1. The (E) designation for hazardous materials, air quality and noise would ensure that the Proposed Actions would not result in significant adverse impacts.

2. No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable.

This Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

Should you have any questions pertaining to this Negative Declaration, you may contact Christopher Lee at (212) 720-3429.

Olga Abinader, Deputy Director
Environmental Assessment & Review Division
Department of City Planning

Date: June 2, 2017

Marisa Lago, Chair
City Planning Commission

Date: June 5, 2017