



## United States Department of the Interior

NATIONAL PARK SERVICE  
1849 C Street, N.W.  
Washington, D.C. 20240



February 28, 2014

Re: **Times Square Theater, 217 West 42nd Street, New York, New York**  
Project Number: **28930**

Dear

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), National Park Service, denying certification of the rehabilitation of the property cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 C.F.R. part 67) governing certifications for federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank you,

for meeting with me in Washington on January 28, 2014, and for providing a detailed account of the project.

After reviewing the project as presented in the application reviewed by TPS, I determined that the rehabilitation of the Times Square Theater was not consistent with the putative historic character of the property, and that the project as proposed therein did not meet the Secretary of the Interior's Standards for Rehabilitation (the Standards). However, at the appeal meeting, you proposed modifications to the project in response to the denial issues cited by TPS. Following the meeting, upon careful review of the complete record for the project, as now modified, I find that these changes, if carried out as proposed, would bring the project into conformance with the Standards. Accordingly, I hereby reverse the TPS denial of certification.

In response to the submitted Historic Preservation Certification Application Part 1—Evaluation of Significance, for the Times Square Theater, the National Park Service issued a Preliminary Determination of Individual Listing on June 14, 2013, stating that the property would “likely be listed individually in the National Register of Historic Places (NRHP) if nominated by the State Historic Preservation Officer.” After reviewing the Historic Preservation Certification Application Part 2—Description of Rehabilitation, describing the proposed rehabilitation for continued use as a theater, TPS found that it did

not meet the Standards owing to changes planned for both the exterior and the interior. On the exterior, these include the addition of LED signs on the rooftop and between the columns on the facade, as well as the conversion of the marquee to a functional balcony. On the interior, treatments cited include changes to the decorative plaster ceiling concomitant upon the insertion of a new wall behind the auditorium and modifications to the auditorium walls accompanying the installation of acoustical panels.

With regard to the TPS denial issues of signage—concern that the originally proposed signage and marquee would overwhelm the historic character of the façade—at our meeting you proposed to modify the new signage program in several ways. The rooftop sign will be smaller than first proposed; it will still be above and set back from the main parapet but will now be lower in height than the parapet of the stage house and will be segmented to complement the three-part division of the facade below it. Nevertheless, it is still a large and visually prominent sign. However, historic photographs of the theater demonstrate that signage was always prominent on the building, at times totally covering its upper facade. The same was true for other theaters and buildings in the Times Square area, and the same is true today. Consequently, I have determined that the revised design for the rooftop sign— on this particular building and in this particular location—is compatible with the overall historic character of the property.

With regard to the signage that was originally proposed to fill the spaces between the columns of the loggia at the second story, you have proposed to instead replicate the one remaining cast iron frame that originally held posters, with lighted signs set into the space where the posters were originally displayed. The overall visual appearance will thus closely replicate the configuration visible in historic photographs. I have determined that this change complies with the Standards.

With regard to the marquee, the original proposal to fit the marquee for use as a balcony has been deleted from the project. Consequently, the marquee denial issue is moot and thus has not entered into my decision

With regard to the interior, TPS objected to the dropped flat ceiling above the new exit corridor, changes to the ceiling under the balcony in the auditorium, and the configuration of acoustical panels installed in the auditorium. The Times Square Theater originally shared egress from the north side of its auditorium with the south egress from another theater fronting on 43<sup>rd</sup> Street, an unacceptable condition under modern building codes. The new exit corridor was created by constructing a wall along the back of the main floor seating area. In the revised proposal, you have eliminated the dropped, flat ceiling above the new corridor and have retained the ceiling in that location at its original height. With regard to the decorative plaster ceiling under the balcony, you have devised a scheme whereby it will be preserved substantially intact, albeit with the large decorative medallions moved forward from their original locations. I also note that the changes to the decorative plasterwork under the balcony are relatively modest in relation to the decorative features in the remainder of the auditorium, which are being retained intact and repaired where necessary. And, the configuration of the acoustical panels has been changed to respect the configuration of the historic paneling on the auditorium walls. In the context of other Times Square theaters, after rehabilitation this will be an unusually intact historic interior. I have determined that these changes comply with the Standards.

Consequently, I find that the proposed rehabilitation, modified as noted above, will remedy the objections to certification cited by TPS, and that the overall impact of the rehabilitation on the historic character of the property meets the Standards.

Although I am reversing TPS's denial of certification, the project will not become a certified rehabilitation eligible for the tax incentives until it is completed and so designated. Should you have any questions concerning procedures for final certification, please contact Michael Auer at 202-354-2031.

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the November 21, 2013, denial that TPS issued regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

John A. Burns, FAIA  
Chief Appeals Officer  
Cultural Resources

cc: SHPO-NY  
IRS