

127-15-BZ

CEQR #15-BSA-210Q

APPLICANT – Goldman Harris LLC., for Flushing Square, LLC., owner.

SUBJECT – Application May 29, 2015 – Special Permit (§73-66) to permit the construction of building in excess of the height limits established pursuant Z.R. §§61-211 & 61-22. The proposed building was approved by the Board pursuant to BSA Calendar Number 156-03-BZ. C2-2/R6 zoning district

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard, Block 04958, Lot(s) 48, 38, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....3

Negative:.....0

Abstain: Commissioner Chanda.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 21, 2015, acting on Department of Buildings Application No. 401622669, reads in pertinent part:

 ZR 61-21, 61-22 – Building contrary to height restrictions of Article 6, Chapter 1 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-66 and 73-03, to permit, within an R6 (C2-2) zoning district, on a site under the jurisdiction of the Landmarks Preservation Commission, the construction of a 16-story mixed-use commercial/community facility/residential building which exceeds the maximum height limits around airports, contrary to ZR §§ 61-21 and 61-22; and

WHEREAS, a public hearing was held on this application on July 14, 2015, after due notice by publication in *The City Record*, with continued hearings on August 25, 2015, and September 18, 2015, and then to decision on October 27, 2015; and

WHEREAS, Vice-Chair Hinkson, Commissioner Montanez and Commissioner Ottley-Brown performed inspections of the subject site and neighborhood; and

WHEREAS, the subject site is located on the north side of Northern Boulevard, between Prince Street and Farrington Street, within an R6 (C2-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 13, 2005 when, under BSA Cal. No. 156-03-BZ, the Board granted a variance to permit the development of a 200-unit, 17-story mixed-use commercial/community facility/residential building, with ground level retail, second floor community facility space, and 229 accessory parking spaces in a three-level below-grade parking garage; and

WHEREAS, on May 29, 2007, the Board issued a letter of substantial compliance permitting the following changes to the proposal: (1) the elimination of one floor, reducing the building to 16 stories with an average floor to ceiling height of 10'-2" instead of 9'-4"; (2) the expansion of the footprint of floors seven through 16 to redistribute the floor area from the floor that has been eliminated; (3) the modification of the size of certain units; and (4) the redesign of the inner courts; and

WHEREAS, on January 12, 2010, the Board granted an extension of time to complete construction for a term of two years, to expire on January 12, 2012; and

WHEREAS, on July 12, 2011, the Board granted an amendment to permit the following modifications to the previously-approved plans: (1) an increase in the number of dwelling units from 200 to 357; (2) a reduction in the average unit size from 1,437 sq. ft. to 787 sq. ft.; (3) an increase in the number of accessory parking spaces from 229 to 385; (4) a 6,503 sq. ft. reduction in the residential floor area (from 287,313 sq. ft. to 280,810 sq. ft.) and a corresponding 6,503 sq. ft. increase in the commercial floor area (from 10,957 sq. ft. to 17,460 sq. ft.) through the addition of a retail mezzanine between the first and second floors; (5) the relocation of the community facility space from the second floor to the third floor; (6) a reduction in the depth of the rear yard from 31'-5" to 30'-0"; and (7) a reduction in the initial setback distance from 20'-0" to 15'-0"; and

WHEREAS, on January 31, 2012, the Board granted a second extension of time to complete construction for a term of four years, to expire on January 31, 2016; and

WHEREAS, on May 29, 2015, the applicant filed the subject application as a companion to its March 11, 2015, application under BSA Cal. No. 156-03-BZ, which was filed to further amend the December 13, 2005 variance and extend the time to complete construction thereunder; and

WHEREAS, the applicant's March 11, 2015 application under BSA Cal. No. 156-03-BZ is granted by separate decision, dated October 27, 2015; and

WHEREAS, the applicant proposes to construct a 16-story mixed-use commercial/community facility/residential building which exceeds the height limits established under ZR §§ 61-21 and 61-22; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Councilmember Peter Koo, councilmember for the 20th District, Queens, recommends approval of this application; and

WHEREAS, the Board notes that ZR § 61-21 (Restriction on Highest Projection of Building or Structure) restricts the height of buildings or structures within designated flight obstruction areas; and

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WHEREAS, specifically, the provision sets forth that the highest projection of any building or structure may not penetrate the most restrictive of either approach surfaces, transitional surfaces, horizontal surfaces, or conical surfaces, within an Airport Approach District of a flight obstruction area; and it may not penetrate the horizontal surface or conical surface within the Airport Circling District of the flight obstruction area; and

WHEREAS, however, pursuant to ZR § 73-66 (Height Regulations around Airports) the Board may grant a special permit to permit construction in excess of the height limits established under ZR §§ 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection within any Flight Obstruction Area), only (1) subsequent to the applicant submitting a site plan, with elevations, reflecting the proposed construction in relation to such maximum height limits, and (2) if the Board finds that the proposed would not create danger and would not disrupt established airways; and

WHEREAS, the provision also provide that, in its review, the Board shall refer the application to the Federal Aeronautics Administration (FAA) for a report as to whether such construction will constitute a danger or disrupt established airways; and

WHEREAS, as to the information submitted by the applicant, the Board notes that the applicant submitted a site plan with elevations reflecting the proposed construction, which includes information about the maximum as-of-right height and the maximum height approved by the FAA for each building; and

WHEREAS, as to the Board's determination about the safety of the proposed construction with regard to the proximity to the airport, the Board notes that the FAA regulates the heights of buildings within proximity to airports and that since the subject site is located within the flight obstruction area for LaGuardia Airport, it falls within the area regulated by the FAA; and

WHEREAS, the applicant represents that it filed applications with the FAA for review and approval of proposed building;

WHEREAS, on February 11, 2015, the FAA issued a Determination of No Hazard to Air Navigation for the project (the "FAA Determination"), which expires on August 11, 2016; and

WHEREAS, specifically, the FAA Determination states that the proposed "structure will have no adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities..."

WHEREAS, the FAA determination is based on an examination of eight points on the roof of the building, referred to as FAA Building Points 1 – 8; FAA Building Points 2, 3, 6 and 7 are located on the

top of the Penthouse Parapet, FAA Building Points 1, 4, 5, and 8 are located on the top of the Mechanical Parapet; and

WHEREAS, the proposed height of the building at the eight points evaluated by the FAA is as follows: 209'-0" (AMSL (equivalent to NAVD-88)) at FAA Building Points 2, 3, 6 and 7; and 200'-1" (AMSL (equivalent to NAVD-88)) at FAA Building Points 1, 4, 5, and 8; and

WHEREAS, the maximum buildings heights approved by the FAA are as follows: 20 feet site elevation (SE) / 184 feet above ground level (AGL) / 204 feet above mean sea level (AMSL) (FAA Building Point 1); 20 feet site elevation (SE) / 190 feet above ground level (AGL) / 210 feet above mean sea level (AMSL) (FAA Building Point 2); 20 feet site elevation (SE) / 190 feet above ground level (AGL) / 210 feet above mean sea level (AMSL) (FAA Building Point 3); 20 feet site elevation (SE) / 184 feet above ground level (AGL) / 204 feet above mean sea level (AMSL) (FAA Building Point 4); 20 feet site elevation (SE) / 184 feet above ground level (AGL) / 204 feet above mean sea level (AMSL) (FAA Building Point 5); 20 feet site elevation (SE) / 190 feet above ground level (AGL) / 210 feet above mean sea level (AMSL) (FAA Building Point 6); 20 feet site elevation (SE) / 190 feet above ground level (AGL) / 210 feet above mean sea level (AMSL) (FAA Building Point 7); 20 feet site elevation (SE) / 184 feet above ground level (AGL) / 204 feet above mean sea level (AMSL) (FAA Building Point 8);

WHEREAS, the Board notes that the FAA Determination is conditioned upon the following items, all of which the Board adopts as conditions to the issuance of the subject special permit: (1) the proposed building must be marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights – Chapters 4, 5 (Red), and 12; (2) the applicant must file FAA Form 7460-2, Notice of Actual Construction or Alteration in the event that the project is abandoned as well as at least ten (10) days prior to the start of construction and within five (5) days after construction reaches its greatest height; and

WHEREAS, the Board notes that the FAA-approved height includes all appurtenances to the building; and

WHEREAS, accordingly, the Board notes that the proposed building heights are equal to those approved by the FAA; and

WHEREAS, the Board notes that the FAA regulations are similar to those found in the ZR but differ slightly based on updated reference points and runway elevations; and

WHEREAS, the applicant has also submitted requests for approval to the Port Authority of New York/New Jersey (PA), which operates LaGuardia Airport; and

WHEREAS, as reflected in a no objection letter

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dated March 3, 2015, the PA approves of the project and references the FAA Determination; and

WHEREAS, the Board notes that its review was limited to the request for an increase in height above that permitted as-of-right, pursuant to the special permit; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist, CEQR No. 15-BSA-210Q, dated May 29, 2015; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-66 and 73-03, to permit, within an R6 (C2-2) zoning district the construction of a 16-story mixed-use commercial/community facility/residential building which exceeds the maximum height limits around airports, contrary to ZR §§ 61-21 and 61-22; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received September 2, 2015"- (17) sheets and *on further condition*:

THAT the maximum height of the buildings, including all appurtenances, shall be as follows: 209'-0" (AMSL (equivalent to NAVD-88)) at FAA Building Points 2, 3, 6 and 7; and 200'-1" (AMSL (equivalent to NAVD-88)) at FAA Building Points 1, 4, 5, and 8;

THAT the proposed building must be marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights – Chapters 4, 5 (Red), and 12;

THAT the relief granted herein is only that

A true copy of resolution adopted by the Board of Standards and Appeals, October 27, 2015.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

associated with ZR § 73-66 and all construction at the site shall be as approved by DOB and must comply with all relevant Building Code and zoning district regulations;

THAT the applicant must comply with all FAA notification requirements associated with the construction at the site including, without limitation, that the applicant must file FAA Form 7460-2, Notice of Actual Construction or Alteration in the event that the project is abandoned as well as at least ten (10) days prior to the start of construction and within five (5) days after construction reaches its greatest height;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 27, 2015.

