

156-03-BZ

APPLICANT – Goldman Harris LLC, for Queens Theater Owner LLC, owner.

SUBJECT – Application November 8, 2018 – Extension of Time to commence construction of a previously granted Variance § (72-21) for the construction of a 16-story mixed-use commercial/community facility/ residential building contrary to the bulk regulations which expires on October 21, 2019. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a previously granted variance (BSA Cal. No. 156-03-BZ) and special permit (BSA Cal. No. 127-15-BZ), which will expire on October 27, 2019; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding 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, in Queens; and

WHEREAS, the site has approximately 159 feet of frontage along Northern Boulevard, a depth of 278 feet, 16 feet of frontage along Farrington Street (located approximately 151 feet north of the corner of Northern Boulevard and Farrington Street, former tax lot 38) and is occupied by a former movie theater, known as the RKO Keith's, with a ticket lobby and grand foyer designated as an interior landmark by the New York City Landmarks Preservation Commission ("LPC") in 1984; and

WHEREAS, the Board has exercised jurisdiction over this 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 and residential building and 229 off-street accessory parking spaces contrary to zoning regulations relating to the maximum permitted residential floor area ratio, maximum permitted mixed-use floor area ratio minimum open space and minimum off-street accessory parking spaces on condition that all work substantially conform to the approved plans; a total of 229 attended parking spaces be provided in the

accessory parking garage; prior to the issuance of any New York City Department of Buildings ("DOB") permit for any work on the site that would result in soil disturbance (such as demolition, site preparation, grading or excavation), the applicant or any successor would perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Restrictive Declaration to the satisfaction of the New York City Department of Environmental ("DEP") and submit a written report that must be approved by Protection DEP; no temporary or permanent certificate of occupancy be issued by DOB or accepted by the applicant or successor until DEP issues a Final Notice of Satisfaction or a Notice of No Objection indicating that the measures and conditions in the Restrictive Declaration have been completed to DEP's satisfaction; construction materials and windows providing at least 35 dBA of attenuation with alternate means of ventilation be used in order to maintain an interior noise level of 45 dBA; the applicant notify the New York City Department of Transportation ("DOT") six months prior to the opening of the building in order to investigate the feasibility of implementing traffic improvement measures; the applicant submit the following documents to the LPC for review and approval prior to any demolition, construction or development at the subject site: Construction Protection Plan for the interior landmark, an amended "Data Recovery" section of the Revised Mitigation Plan that shall read, "The scope of work for HABS documentation shall be submitted to the LPC for review and approval prior to the demolition and the start of the documentation process," a revised EAS stating that any written approvals by the LPC Preservation Department shall be included in the Final EAS; a copy of Certificate of Appropriateness 06-1202 for the subject property issued September 6, 2005, be included in the Final EAS, as well as a Scope-of-Work for HABS documentation; the Applicant submit the Scope-of-Work for HABS documentation to LPC for its review and approval prior to demolition and the start of the documentation process; and the bulk parameters of the proposed building be as follows: (1) a residential FAR of 5.64 (245,798 square feet of zoning floor area); (2) a total FAR of 7.5 (314,127 square feet of zoning floor area); (3) an open space ratio of 4.86 percent; (4) 17 stories; (5) a total building height of 164'-11" without bulkheads and 174'-11" with bulkheads; (6) street wall height of 41 feet; and (7) an actual height for flight path purposes of 194.9 feet, AMSL; and

WHEREAS, by letter dated May 29, 2009, under BSA Cal. No. 156-03-BZ, the Board permitted the following alterations to the plans as substantially compliant with the variance grant: (1) reduction of the building to 16 stories with average floor to floor heights of 10'-2", rather than 9'-4"; (2) increase in the floorplate

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of the seventh through sixteenth floor to redistribute floor area from the eliminated seventeenth floor; (3) modifications to the size of certain units; and (4) inner court redesign; and

WHEREAS, on January 12, 2010, under BSA Cal. No. 156-03-BZ, the Board granted an extension of time to complete construction, which expired on December 13, 2009, pursuant to ZR § 72-23, extending such time by two years, expiring on January 12, 2012 on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on July 12, 2011, under BSA Cal. No. 156-03-BZ, the Board granted an amendment of the variance to permit modifications to the previously approved plans, specifically: (1) an increase in the number of dwelling units from 200 to 357; (2) a reduction in the average unit size from 1,437 square feet to 787 square feet; (3) an increase in the number of accessory parking spaces from 229 to 385; (4) a reduction in the residential floor area by 6,503 square feet (from 287,313 square feet to 280,810 square feet) and a corresponding increase in the commercial floor area by 6,503 square feet (from 10,957 square feet to 17,460 square feet) through the addition of a retail first floor mezzanine; (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 feet; and (7) a reduction in the initial setback distance from 20 feet to 15 feet on condition that all work substantially conform to the approved plans and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on January 31, 2012, under BSA Cal. No. 156-03-BZ, the Board granted a four year extension of time to complete construction due to funding delays on condition that substantial construction be completed by January 31, 2016, approval of the building by the FAA be in effect at the time of DOB permit issuance and that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on October 27, 2015, under BSA Cal. No. 156-03-BZ, the Board granted another four year extension of time to complete construction, expiring October 27, 2019, and an amendment to the variance, permitting the following changes to the previously approved plans: (1) an increase in the height of the proposed building by 11'-7" measured to the roof and 14'-3" measured to the top of the bulkhead, from 194.75 feet to 209 feet (AMSL, NAVD); (2) a reduction in the number of dwelling units in the proposed building from 357 to 269; (3) a change in the dwelling units from rentals to condominiums; and (4) redesign of the entry façade on Northern Boulevard on condition that all work substantially conform to the approved plans and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on October 27, 2015, under BSA Cal.

No. 127-15-BZ, the Board additionally granted a special permit, pursuant to ZR §§ 73-66 and 73-03, to permit the height of the development at the site to exceed the maximum height limits around airports, contrary to ZR §§ 61-21 and 61-22 on condition that all work substantially conform to the approved plans; the maximum height of the building, including all appurtenances, be 209 feet 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; the building 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; all construction at the site be as approved by DOB and comply with all relevant Building Code and zoning district regulations; the applicant comply with all FAA notification requirements associated with the construction at the site, including, without limitation, the filing of 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 substantial construction be completed within four years, by October 29, 2019, pursuant to ZR § 73-70; and

WHEREAS, in anticipation of the expiration of the time to complete construction at the site pursuant to the previously granted variance and special permit, the applicant requests herein additional four-year extensions of time for both applications; and

WHEREAS, the applicant submits that construction at the site has been stymied by two changes in ownership of the site subsequent to the grant of the variance in 2005 and to those owners' inability to secure financing for the project; that the applicant acquired the property in 2016, is a subsidiary of a large and publically traded real estate company, has the resources to complete construction within the next four years and that demolition work at the site is scheduled to commence in March 2019; and

WHEREAS, the applicant additionally states that they have continued to work closely with LPC and obtained a new Certificate of Appropriateness in order to accommodate required modifications to the preservation and restoration methods of the interior landmark, specifically, due to water damage, plasterwork can no longer be kept in place with a building constructed around it and now, such ornamental plasterwork and woodwork at the premises must be disassembled, restored off-site and re-installed onsite; and

WHEREAS, the Board notes that this is an extremely complex project with significant challenges, including the preservation of an interior landmark; and

WHEREAS, by letter dated February 1, 2019, the Fire Department states that an inspection was performed at the premises by the Bureau of Fire Prevention's Construction, Demolition & Abatement Unit ("CDA")

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and Fire Suppression Unit ("FSU"), which found that the standpipe system is out-of-services; accordingly, a violation order was issued to restore the standpipe system to either a wet system (as described in 2014 FC Section 905.12) or a dry system (as described in 2014 FC Section 1413 and Chapter 33 of the Building Code); and

WHEREAS, Fire Department, therefore, requests, that, should the Board grant this applications, the Board also institute a condition that the standpipe system be restored to operations order as either a wet or dry standpipe system forthwith and states that, in the event of noncompliance with either the violation order or the Board's variance or special permit, the Bureau of Fire Prevention will request a compliance hearing and rescission of the previous approvals; and

WHEREAS, based on its review of the record, the Board finds that a four (4) year extension of time to complete construction pursuant to the variance previously granted under BSA Cal. No. 156-03-BZ and the special permit granted under BSA Cal. No. 127-15-BZ is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution dated December 13, 2005, as amended through October 27, 2015, under BSA Cal. No. 156-03-BZ; and *reopens* and *amends* the resolution dated October 27, 2015, under BSA Cal. No. 127-15-BZ, so that, as herein amended, this portion of the resolution reads: "to grant a four (4) year extension of time to complete construction to October 27, 2023; and *on further condition*:

THAT substantial construction shall be completed by October 27, 2023, as evidenced by an inspection and determination by the Department of Buildings;

THAT prior to the start of demolition work at the premises, the applicant shall provide necessary access to and obtain all necessary sign-offs from the Fire Department, including sign-off for the installation/restoration of an appropriate wet or dry standpipe system;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

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

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

Adopted by the Board of Standards and Appeals, February 5, 2019.

A true copy of resolution adopted by the Board of Standards and Appeals, February 5, 2019.

Printed in Bulletin No. 7, Vol. 104.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

