

203-15-BZ
CEQR #16-BSA-025M

APPLICANT – Kramer Levin Naftalis & Frankell LLP, for Margaret Cotter, Liberty Theaters, owners.
SUBJECT – Application August 28, 2015 – Variance (§72-21) to allow the restoration, reuse and enlargement of an existing commercial building located partly in a C6-4 district/Special Union Square District and an R8B district. The building is Tammany Hall and is a landmark.

PREMISES AFFECTED – 44 Union Square East, Block 0872, Lot 078, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative:.....0

Recused: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 28, 2015, acting on Department of Buildings Application Nos. 121193047, reads in pertinent part:

1. ZR 22-10. Proposed Use Group 6 and 10 are not permitted in the R8B zoning district portion of the zoning lot per ZR Section 22-10. There are no bulk and use regulations for a commercial use in a residential zoning district.
2. ZR 118-31. Proposed enlargement does not meet the minimum street wall height requirements of 85 feet per ZR Section 118-31.
3. ZR 118-42. Proposed enlargement does not meet the principal entrance requirements per ZR 118-42; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a landmark site partially within a C6-4 zoning district and partially within an R8B zoning district, partially within the Special Union Square District, the conversion and enlargement of an individual New York City landmark building known as Tammany Hall (the “Building”); and

WHEREAS, the proposed conversion and enlargement does not comply with zoning regulations for use, minimum street wall height and principal entrance, contrary to ZR §§ 22-10, 118-31, and 118-42; and

WHEREAS, a public hearing was held on this application on January 22, 2016, after due notice by publication in the *City Record*, with a continued hearing on February 23, 2016, and then to decision on March 22, 2016; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwestern portion of the block bounded by Union Square East, to the west, East 17th Street, to the north, Irving Place, to the east, and East 16th Street, to the south; the site has 79 feet of frontage along Union Square East and 150 feet of frontage along East 17th Street, it contains

approximately 11,975 sq. ft. of lot area; the portion of the site that extends 100 feet east of Union Square East is within a C6-4 zoning district, and also within the Special Union Square District, the remainder of the subject site is located within an R8B zoning district and is not located within the Special Union Square District; and

WHEREAS, as stated in the New York City Landmarks Preservation Commission’s (“LPC”) October 29, 2013 Designation Report (Designation List 469, LP-2490) (the “Designation Report”) the Building is an individual New York City Landmark; and

WHEREAS, the applicant states that the Building was constructed in 1928 as the headquarters of Tammany Hall, a New York City political organization, and notes that, as stated in the Designation Report, the Building was designed in the Neo-Georgian style evocative of New York’s Federal Hall and Thomas Jefferson’s Monticello; and

WHEREAS, the applicant states that the Building’s configuration reflects its design for use as the headquarters of an early 20th Century political party, specifically; the applicant states that the Building contains an auditorium designed as a meeting hall for political rallies and meetings, retail storefronts along Union Square East, offices on the second and third floors, and a caretaker’s apartment on the partial fourth floor of the Building; and

WHEREAS, the applicant notes that the auditorium occupies the eastern two thirds of the Building and is capped by a dome that rises to a height of 40’-0”;

WHEREAS, the applicant states that the central portion of the Building contains a windowless room on an interstitial floor between the third and fourth floors of the Building, which is accessed through a separate stairway from the third floor; and

WHEREAS, the applicant states that the building was sold in 1943 to Local 91 of the International Ladies Garment Workers Union, which used the building for administrative offices, meeting rooms, classrooms, and art studios; and

WHEREAS, the applicant states that since 1983, the Building’s auditorium has been used as the Union Square Theater, that local retail occupies the ground floor retail spaces and classroom space, and that the remainder of the Building was, until recently, occupied by classroom and production space for the New York Film Academy, a for-profit film school (the remainder of the Building is currently vacant); and

WHEREAS, the applicant states that the Building contains 35,744 sq. ft. of floor area; and

WHEREAS, the applicant proposes to remove the auditorium and replace the existing ground floor, and partial second, third, and fourth floor slabs with full floor slabs; add a new fifth and sixth floor; construct a new glass and steel dome at the roof of the Building; add five elevators; restore the Building’s historic façade; and excavate portions of the cellar; and

WHEREAS, the applicant also proposes to use portions of the Building, including portions located in the R8B zoning district, for commercial use (Use Groups 6 and 10); specifically, the proposed enlargement would increase the floor area of the Building from 35,744 sq. ft. of floor area to 55,115 sq. ft. of floor area, with retail use (UG6 or 10A) in the cellar, first, second, and third floors, and office use (UG6B) on the fourth, fifth, and sixth floors; and

WHEREAS, in order to enlarge the Building as

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proposed, the applicant seeks the following waivers: (1) use (the proposed UG6 or 10A retail uses are not permitted in the R8B zoning district, as per ZR § 22-10); (2) street wall height (a mandatory street wall height of 85'-0" to 125'-0" is required pursuant to ZR § 118-31, a street wall height of 49'-7½" is proposed); (3) location of principal entrance (as per ZR § 118-42, if a use occupies at least 40-percent of the floor area of a building or portion of a building that fronts on Union Square East, then the principal entrance to that use shall be located on such street, the applicant proposes to locate the principal entrance of the Building for the office uses on East 17th Street); and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the history of the development of the site; and (2) the location of the subject site within two zoning districts; and

WHEREAS, the applicant notes that the Building was designed for a purpose which no longer exists, to wit, the headquarters of political party which operated in the 19th and early 20th centuries, thus, the applicant states, the Building's interior is functionally deficient and unsuited for its current use; and

WHEREAS, specifically, the applicant states the eastern two-thirds of the Building are occupied by an obsolete auditorium which was purpose-built as a political meeting hall and not a theater and, as such, it contains a number of deficiencies which preclude its successful use by a theater production company, including, *inter alia*, a lack of wing space, no crossover behind the stage, a 40'-0" high dome which is ill-suited to musical productions absent significant modification or acoustical treatment, insufficient dressing rooms and offices, a lack of an orchestra pit and the absence of a trap door beneath the stage, and a lobby that cannot accommodate an audience before or after performances; and

WHEREAS, in support of the foregoing, the applicant submitted a letter from the President of Liberty Theatres, the owner of the Building, dated June 23, 2015; and

WHEREAS, the applicant states further that the westernmost portion of the Building contains small rooms with low ceiling heights on multiple levels, inefficiencies which preclude a profitable use of the Building; and

WHEREAS, the applicant notes that because of site's split-lot condition, there are different use regulations applicable to the eastern and western portions of Building; the applicant states that the foregoing condition precludes the replacement of the Building's inefficient floors with new floors at appropriate floor to ceiling heights to allow for commercial uses throughout the Building, as commercial use is not permitted in the R8B portion of the site; the applicant also states that reusing the Building for residential use, which is permitted in both zoning districts, is not practicable due to the large floor plates of the Building, the lack of natural light to the Building's interior, and non-compliances with the New York State Multiple Dwelling Law as well as other applicable regulations related to light and air, required yards, circulation, and means of egress; and

WHEREAS, based upon the foregoing, the Board

finds that the history of the development of the site and landmarked Building, in conjunction with the split-lot condition of the site, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility of development of the site in strict compliance with the Zoning Resolution; and

WHEREAS, the applicant provided the Board with an analysis of an as-of-right development scenario in which the Building would be developed in two discrete portions along the zoning district boundary line, with the western two-thirds of the Building within the C6-4 zoning district used for office and retail uses and the eastern third of the Building, within the R8B zoning district, used for residential use on the second through fifth floors, with retail on the first floor (the "As-of-Right Development"); and

WHEREAS, the applicant notes that the As-of-Right Development would necessitate a mansard roof to be constructed within the existing roof volume, an elevator core located along the zoning district boundary line to serve both the commercial and residential portions of the Building and a lobby along Union Square East for the office use within the Building; and

WHEREAS, the applicant also states that additional components of the As-of-Right Development include: the inclusion of a courtyard within the western (commercial) portion of the Building in order to provide natural light to the offices on the fourth and fifth floors of that portion of the Building; the demolition of the rear wall of the Building within the R8B zoning district and the construction of a replacement wall with the required 15'-0" distance between the windows of the rear residential units and the wall of the adjoining building; a complying rear yard on the fifth floor of the Building; and

WHEREAS, the applicant notes that the As-of-Right Development would increase the floor area of the Building from 35,744 sq. ft. to 52,613 sq. ft. and would maintain the existing bulk non-compliances within the R8B zoning district, the non-complying street wall height of 49'-7½", and the encroachment of the rebuilt mansard roof into the required 15'-0" setback required above 60'-0"; and

WHEREAS, the applicant also provided the Board with an analysis of a lesser variance scenario in which, like the As-of-Right Development, the existing floors would be replaced with new floor slabs at standard floor to ceiling heights throughout the Building and retail and office uses would be located throughout the entire Building, including within the R8B portion thereof, with the primary entrance to the office use on East 17th Street (the "Lesser Variance Development"); and

WHEREAS, the applicant submits that the As-of-Right Development would not be financially feasible in that the proposed commercial and residential use would not generate sufficient income to meet the necessary construction costs including, *inter alia*, demolishing the Building's interior, constructing new floor slabs, demolishing and constructing a new rear wall within the R8B zoning district, and restoring the Building's historic façade as required by the LPC; and

WHEREAS, the applicant maintains that the return on the office use contemplated in the As-of-Right Development would be compromised by the deep and windowless office spaces on the fourth and fifth floors of the Building and that the return on the residential use

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contemplated in the As-of-Right Development would be compromised by (1) a lack of windows on the East 17th Street façade of the fourth and fifth floors, such that residential units thereupon would be reliant on skylights for natural light, (2) limited light to the rear residential units due to the existing non-complying rear yard, and (3) the units facing East 17th Street are negatively impacted by neighboring uses, including the loading bay of the W Hotel and the proximate pedestrian and vehicular commercial activity characteristic of Union Square; and

WHEREAS, the applicant also submits that the Lesser Variance Development would not be a financially feasible project because the proposed commercial use in an enlargement that comprises less floor area than the proposed project, and locates that floor area within two floors with minimal windows, could not generate sufficient income to meet the construction costs associated with such development, including the demolition of the Building's interior, the construction of new floor slabs, and the restoration of the Building's historic façade; and

WHEREAS, the applicant considered two alternatives to the As-of-Right Development, a six unit alternative and a three unit alternative; both alternatives to the As-of-Right Development were evaluated as both rental and condominium units; the applicant states that with respect to the rental unit analysis in both alternatives, the development costs would greatly exceed the value of the capitalized net operating income; the applicant also states that with respect to the condominium unit analysis in both alternatives, there would be a negative annualized return on total investment; and

WHEREAS, the foregoing financial analyses were supported by a Financial Report dated July 1, 2015, and updated in response to concerns articulated by the Board by letters dated February 9, 2016 and March 3, 2016; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions there is no reasonable possibility of development of the site in strict compliance with the Zoning Resolution; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states the area surrounding Union Square Park is characterized by large commercial uses and ground floor retail; and

WHEREAS, the applicant states that the proposed location of the office lobby on East 17th Street and the proposed commercial use within the R8B zoning district are consistent with neighboring commercial uses; and

WHEREAS, the applicant also states that the peak pedestrian traffic volumes related to the proposed office and retail use would be more compatible with the surrounding residential uses than the evening and weekend activity associated with the Building's existing theater use; and

WHEREAS, the Board notes that on November 16, 2015, the LPC issued Certificate of Appropriateness No. 17-8942 (expires March 10, 2021) for the proposed development (the "C of A"); and

WHEREAS, the applicant notes that, as per the C of A, the applicant will restore the existing façade of the

Building and will rebuild two stone piers at the center of the Building's Union Square East façade; and

WHEREAS, the applicant states that the required façade restoration will also include replacing storefront infill, signage and canopies erected in the 1950s, with appropriate signage and more transparent storefront windows and entryways along East 17th Street; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site, including the history of the development of the site and the split-lot condition of the site; and

WHEREAS, the Board finds that the subject proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type 1 action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 16-BSA-025M, dated December 21, 2015; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, DEP reviewed the project as proposed and determined that the proposed boiler would not result in significant adverse air quality impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type 1 Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, 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 § 72-21 to permit, , on a site partially within a C6-4 zoning district and partially within an R8B zoning district, partially within the Special Union Square District, the conversion and enlargement of an individual New York City landmark building that does not comply with zoning regulations for use, minimum street wall height and principal entrance, contrary to ZR §§ 22-10, 118-31, and 118-42; *on condition* that any and

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all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 21, 2016"--Eighteen (18) sheets; and *on further condition*:

THAT the following will be the parameters of the proposed building: a six floor with cellar commercial use building (UG6 and UG10) containing 55,115 sq. ft. of floor area (4.57 FAR), a street wall height of 49'-7½" with the principal entrance of the Building for the office use located on East 17th Street, all as reflected on the BSA-approved plans;

THAT all construction shall be in conformance with the LPC Certificate of Appropriateness No. 17-8942, dated November 16, 2015;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT a natural gas boiler flue be located greater than 59'-0" from the east lot line facing Irving Place;

THAT all deliveries to the subject building shall be made curbside, at the building service entrance located on East 17th Street, and shall proceed through the service corridor;

THAT deliveries may not be left on the sidewalk or anywhere else outside the subject building;

THAT building management shall, when practicable, schedule deliveries during off-peak hours to avoid pedestrian congestion;

THAT building management shall monitor deliveries and shall be responsible for keeping sidewalks free of hazards or obstructions caused by or related to deliveries;

THAT prior to the issuance of a certificate of occupancy for the occupancy of the ground floor of the building, an elevator shall be installed in order to provide the ground floor retail tenant with access to the service corridor;

THAT all building trash shall remain stored within the building in the designated trash room and transferred internally through the building's service corridors to be placed curbside no more than one (1) hour before scheduled trash pick-up;

THAT trash shall be removed from the site six (6) days per week;

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;

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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 22, 2016.

A true copy of resolution adopted by the Board of Standards and Appeals, March 22, 2016.

Printed in Bulletin Nos. 12-13, Vol. 101.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

