

***CORRECTION**

319-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lawrence and Melvin Friedland, owners; IFC Center, lessee.

SUBJECT – Application December 31, 2008 – Special Permit (§73-201) for an expansion of an existing motion picture theater (IFC Center). C1-5 District.

PREMISES AFFECTED – 323/25 and 327 6th Avenue; 14 Cornelia Street, 75’ front of 6th Avenue and 54 frontage on Cornelia Street, Block 589, Lots 19, 30, 31, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul Selver.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 29, 2008, acting on Department of Buildings (“DOB”) Application No. 110414999 reads, in pertinent part: “Pursuant to Zoning Resolution Section 32-31, proposed motion picture theater with a maximum capacity of 500 persons in a C1-5/R7-2 zoning district requires a special permit from the Board of Standards and Appeals under Zoning Resolution Section 73-201;” and

WHEREAS, this is an application made pursuant to ZR §§ 73-201 and 73-03, to permit, on a site partially within a C1-5/R7-2 zoning district and partially within an R6 zoning district, the proposed 95-seat expansion of an existing motion picture theater (Use Group 8), which does not comply with ZR § 32-17; and

WHEREAS, a public hearing was held on this application on February 24, 2009 after due notice by publication in The City Record, and then to decision on March 17, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, Congressman Jerrold L. Nadler, recommends approval of this application; and

WHEREAS, the subject Zoning Lot, consisting of Tax Lots 30, 31 and 19, is an irregular through-block site bounded on the east by Sixth Avenue and on the west by Cornelia Street, between West 4th Street and Bleecker Street; and

WHEREAS, the Zoning Lot has approximately 75’-2” of frontage on Sixth Avenue, and approximately 52’-8” of frontage on Cornelia Street, and a total lot area 9,146 sq. ft.; and

WHEREAS, Tax Lot 30 and Tax Lot 31 are located entirely within a C1-5/R7-2 zoning district;

Tax Lot 19 is divided by a zoning district boundary with the eastern portion lying within the C1-5/R7-2 zoning district and the western portion located within the adjacent R6 zoning district; and

WHEREAS, Tax Lot 30 and Tax Lot 31 are occupied by a three-story 385-seat motion picture theater (Use Group 8) with three separate cinemas and a total floor area of 10,140 sq. ft. (1.32 FAR); Tax Lot 19 is vacant; and

WHEREAS, the existing theater is currently operating as the “IFC Center;” and

WHEREAS, the applicant states that the existing theater operated as the “Waverly” from 1938 until approximately 2001, during which time it had 586 seats; and

WHEREAS, the applicant further states that after a renovation, the theater reopened in 2005 as the IFC Center with three theaters with a total of 385 seats and a Use Group 6 eating and drinking establishment in an adjoining building on Lot 30; and

WHEREAS, the applicant represents that the use as the site as a theater predated the adoption of the 1961 Zoning Resolution and the existing building was therefore reoccupied as a legal nonconforming theater use; and

WHEREAS, the applicant proposes to convert the area occupied by the Use Group 6 eating and drinking establishment into two additional theaters with 95 new seats, for a total of 480 seats; and

WHEREAS, in the subject C1-5 zoning district, a special permit pursuant to ZR § 73-201 is required to permit an increase in the number of seats from 385 to 480 seats and the creation of two new theaters; thus, the instant application was filed; and

WHEREAS, the grant of a special permit pursuant to ZR § 73-201 requires a finding that a proposed additional theater has a minimum of four square feet of waiting area either within an enclosed lobby or in an open area that is protected during inclement weather; and

WHEREAS, the applicant states that 380 sq. ft. of waiting area is required by the expansion of 95 seats, and that 480 sq. ft. of waiting area is proposed in the lobby area of the ground floor; and

WHEREAS, the applicant further states that there is currently no waiting area requirement for the seats in the three existing theaters because the provision of a patron waiting area based on the number of seats was not required by the Zoning Resolution in effect in 1937 when the theater was built; the seats for those theaters are therefore grandfathered by the prior Zoning Resolution; and

WHEREAS, the applicant supported this statement by providing the zoning calculations approved by DOB and the current Certificate of Occupancy; and

WHEREAS, ZR § 73-201 states that the waiting area shall not include space occupied by stairs, or located within ten feet of a refreshment stand or an entrance to a public toilet; and

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WHEREAS, the plans provided by the applicant indicate that the proposed waiting area is located in an enclosed interior space that includes no space occupied by stairs or within ten feet of a refreshment stand or an entrance to a public toilet; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the applicant states that the Sixth Avenue location of the existing theater building is predominately developed with commercial uses; and

WHEREAS, the applicant further states that the proposed expansion will not increase the bulk or height of the existing building and that changes to the building envelope are limited to the sealing of windows in the façade where the restaurant use is being replaced by theater use; and

WHEREAS, the two proposed theaters will seat 35 and 60 patrons, respectively, the applicant represents that the expansion will result in no appreciable increase in pedestrian or vehicular traffic and further notes that before 2001, the subject building accommodated 586 theater patrons, more than would be permitted by the proposed grant; and

WHEREAS, the applicant states that the proposed theaters will be built with sound attenuation to ensure that they are compatible with adjacent residential uses; and

WHEREAS, the applicant further states that the operation of the theaters rely on staggered screening times, thereby decreasing the number of patrons waiting to purchase tickets or enter a cinema; and

WHEREAS, the Board notes that the applicant provided a current screening schedule indicating that starting times for evening performances were generally spaced at least 15 minutes apart; and

WHEREAS, the Board further notes that drawings provided by the applicant also include residual patron space at the cellar level; and

WHEREAS, at hearing, the Board asked the applicant to confirm that egress complies with all Building Code requirements; and

WHEREAS, in response, the building architect explained the egress from the theaters and represented that the proposed plans comply with all Building Code requirements; and

WHEREAS, accordingly, the Board finds that the proposed expansion will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board notes that the grant of the special permit will facilitate the expansion of a venue for the showing of independently-produced films, thereby enhancing the cultural life of the city on a site where such use is appropriate; 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 are outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-201 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-201 and 73-03, to permit, on a site partially within a C1-5/R7-2 zoning district and partially within an R6 zoning district, the proposed 95-seat expansion of an existing motion picture theater (Use Group 8), which does not comply with ZR § 32-17, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application marked “Received December 31, 2008”-(2) sheets and “February 19, 2009”-(1) sheet; and *on further condition*;

THAT 480 sq. ft. of waiting area shall be provided in the lobby area of the ground floor, as shown on the BSA-approved plans;

THAT residual patron space shall be maintained at the cellar level, as shown on the BSA-approved plans;

THAT all applicable fire safety measures will be complied with;

THAT all egress shall be as approved by DOB;

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 construction shall be completed pursuant to ZR § 73-70;

THAT the Department of Buildings 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 March 17, 2009.

*** The resolution has been corrected in the Approved Plans clause “December 31, 2008”-(2) sheets.**

A true copy of resolution adopted by the Board of Standards and Appeals, March 17, 2009.

Printed in Bulletin Nos. 11-12, Vol. 94.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.