

GOLDMANHARRIS LLC
Attorneys at Law

475 Park Avenue South
New York, New York 10016
www.goldmanharris.com

T. 212 935.1622
F. 212 935.2651
hgoldman@goldmanharris.com

October 2, 2015

STATEMENT OF FACTS
45 Vernon Blvd
Queens, NY 11101
Block 26, Lots 4, 8, 10

Introduction

This application seeks use and bulk variances pursuant to §72-21 of the Zoning Resolution to permit a predominantly residential development (the “Proposed Development”) within Queens Community District 2. The variances are requested in order to offset the premium remediation costs associated with contamination resulting from historical paint and varnish manufacturing and storage.

Project Site

The site (“Site”) is located in the Long Island City section of Queens within an M1-4 zoning district. The Site consists of Block 26, Lots 4 (formerly Lots 4 and 8) and 10, with 100 feet of frontage on 46th Avenue between 5th Street and Vernon Boulevard and 235 feet of frontage on Vernon Boulevard between 45th and 46th Avenues. The total lot area is 54,498 square feet.

Lot 4 contains a vacant four-story manufacturing building (the Paragon Paint Building) fronting on Vernon Boulevard and a one-story warehouse fronting on 46th Avenue. Lot 10 contains a one-story signage shop.

The Applicant seeks to convert the Paragon Paint Building to residential use and develop the remainder of the site for residential and retail use. In addition to the Paragon Paint Building, the project would contain 8-story, 13-story, and 28-story elements, and would feature a Waterfront Public Access Area providing 18,074 square feet of publicly accessible open space along Anable Basin. When completed, the project would provide 344 residential units, of which 20 percent (69 units) would be affordable.

Surrounding Land Use and Building Context

The surrounding area contains a mix of industrial and automotive uses, low-rise and high-rise residential use, and local commercial uses. There is a large custom plastic manufacturing and packaging facility (“Plaxall”) located to the southwest, spanning 46th Avenue and 46th

Road, and a steel manufacturer and installer (“Empire City Iron Works”) located to the east between 46th Avenue and 45th Road. There are also several commercial businesses in the surrounding area, including an auto body repair shop (“Universal Auto Repair & Body Works Inc.”) located on Vernon Boulevard to the southeast of the Project Site and two vehicle fueling stations (NYC Taxi and Ryder Truck Rental) to the north. Adjacent to the subject property at the northwest intersection of Vernon Boulevard and 46th Avenue are three mixed commercial and residential buildings. Several three-story buildings with ground-level commercial and upper level residential use are located on Vernon Boulevard to the west of 46th Road. High-rise residential buildings within the Queens West development are located to the west.

Zoning

Anable Basin was carved in 1868 at a time when Long Island City was home to numerous oil refineries and factories. Prior to 1995, the area was zoned M3-1 (heavy manufacturing). Currently, the Project Site is located within an M1-4 (light manufacturing) zoning district and is subject to the Waterfront Zoning (Art. VI, Ch. 2) and Flood Hazard (Art VI, Ch. 4) regulations of the Zoning Resolution. The Site is immediately adjacent to an R6A residential district within the Long Island City Special District. The Proposed Project would be consistent with City policy calling for higher-density development in areas of Long Island City that are no longer needed for manufacturing, have good transit access, and can provide new opportunities for waterfront public access.

Related Application

The Applicant is also applying for a Waterfront Public Access Area certification by the Chair of the City Planning, ensuring that the public space complies with the standards and requirements set forth in the Waterfront Zoning regulations. Certification is a ministerial act.

Use & Bulk Regulations

Within M1-4 district, only certain community facility, commercial and manufacturing uses (Use Groups 4-14, 16 and 17) are permitted as-of-right. The maximum Floor Area Ratio (“FAR”) for community facility use is 6.50 and the maximum FAR for commercial use is 2.0. The Site could, therefore, be developed with up to 354,237 sq. ft. of community facility floor area and 108,996 sq. ft. of commercial use on an as-of-right basis.

The underlying height and setback regulations are governed by the Waterfront Zoning regulations. The maximum base height for all buildings is 60 ft. and the maximum building height is 110 ft. A 10 ft. setback and a 15 ft. setback are required along Vernon Boulevard and 46th Avenue, respectively. In addition, a 15 ft. setback is required on both sides of the visual corridor extending through the Site and a 30 ft. setback is required from the boundary of the waterfront public access area. For buildings or portions thereof greater than the maximum base height, no floor plate of a building shall be greater than 7,000 sq. ft. in area on lots of less than 1.5 acres. Furthermore, for portions of buildings above the maximum base height, the minimum lot coverage landward of the shoreline at a height of 20 ft. shall be 30%.

Description of Project

The Proposed Project will include approximately 286,496 sq. ft. (5.26 FAR) of residential floor area (Use Group 2) and 13,228sq. ft. (0.24 FAR) of retail floor area (Use Group 6), for a total of 299,724 sq. ft. This equals 5.50 FAR on the zoning lot.

The development will include three new buildings and the renovation and reuse of the existing Paragon Paint Building (38 Vernon Blvd.). On Lot 4, the new “South Building” is proposed to be eight stories, with frontage on 46th Avenue. A new central building, “Anable Tower”, contains 28-stories and is located at the rear of the Paragon Paint Building away from Vernon Boulevard. On Lot 10, a new “North Building” is proposed at thirteen stories, with frontage along Vernon Blvd. A total of 344 residential units are proposed, 20% of which will be affordable.

The ground floors of the buildings include retail space accessible from Vernon Blvd. and 46th Avenue. Accessory parking for 24 cars will be provided in the cellar level of the South Building.

Waterfront Public Access Area

The proposed waterfront access area is part of a waterfront public access area plan at Anable Basin. This proposed intertidal plaza engages the waterfront, celebrates its ecological history by reintroducing a thriving salt marsh habitat, and exhibits the tidal rhythms for the enjoyment of the public.

In addition to amenities like a shore public walkway and pier and new upland connection from the City’s grid, the design capitalizes on topographic changes. Upon entering the area from Vernon Boulevard, views to Manhattan’s skyline are framed by the new buildings. A slight rise in the ground plane prevents views to the Basin at first, but as one moves through the space, the water reveals itself. A get down structure emerges out of the water where the tides rise and fall, alternately submerging a revealing portion of the steps. A series of stepped seat walls provide opportunities for respite and views out along the basin to the East River and Manhattan’s skyline beyond.

The plaza utilizes textured pavements to accentuate the topography while anticipating periodic inundation. A wide array of seating opportunities are offered as well, from seat walls with backs and stadium seating to movable tables and chairs and benches. These elements are set within a garden composed of indigenous coastal plants. All of the elements combine to create a singular public space that revives the site’s ecological heritage and provides a fitting public gateway to Anable Basin.

Environmental Status

The Site has a long history of industrial uses, including paint and varnish manufacturing, that have resulted in extraordinary contamination. The New York State Department of Environmental Conservation (“DEC”) admitted the site into the Brownfield Program (“BCP”) on

September 4, 2008 and entered into a Brownfield Cleanup Agreement (“BCA”) with the owner at that time. On January 14, 2009, the New York State Department of Health (“DOH”) declared that the Site presented a significant threat to public health.

However, little remedial work occurred following these actions and none of the required work plans were implemented. The BCA was amended on August 17, 2010 when a new owner took possession. Again, little work was performed and none of the work plan was implemented. The BCP was amended a third time on July 18, 2011, by the current Applicant. Since then, significant work required by the BCP has taken place.

In 2014, DEC accepted the Applicant’s Remedial Investigation Work Plan (“RIWP”), which defined the nature and extent of the site contamination, the contaminant source areas, and an assessment of contaminant disposal and transport. Based upon the RIWP, the Applicant began the Remedial Investigation Process (“RIP”). In the Spring of 2014, the Applicant prepared a Remedial Investigation Report (“RIR”) setting forth the findings of the Remedial Investigation.

The RIR confirmed the presence of at least two distinct light non-aqueous phase liquid (“LNAPL”) plumes on the Site. LNAPLs are petroleum chemicals such as benzene, toluene and xylene, that are groundwater contaminants. These substances are carried in the groundwater from the Project Site into the East River and ultimately the Atlantic Ocean.

In addition, soil sample results identified volatile and semi-volatile organic compounds (“VOC” and “SVOC”) and metals at many locations. Groundwater results also showed VOCs above groundwater quality standards, including the presence of isopropylbenzene in six locations, and at least ten different SVOCs were detected at six different locations at concentrations exceeding the groundwater quality standards. These include naphthalene, Bis(2-ethylhexyl) phthalate and a number of different polycyclic aromatic hydrocarbons. The health effects of these substances include eye, nose, and throat irritation, headaches, loss of coordination, nausea, and damage to liver, kidney, and central nervous system. Some organic compounds can cause cancer in animals and are suspected or known to cause cancer in humans.

After the completion of the RIR, a Remedial Action Work Plan (“RAWP”) was prepared by the Applicant and submitted to DEC for approval. After public comment and approval by DEC, the Applicant may begin the actual remediation. The RAWP was submitted to DEC for approval in March 2014, and is expected to be approved shortly. The Applicant must complete all of the work defined in the RAWP. Upon completion, the Applicant must submit a final engineering report to DEC, verifying compliance with the RAWP. If it is satisfied that the RAWP has been properly completed, DEC will issue a Certificate of Compliance (“COC”).

DEC also required that the Applicant prepare and implement a Resource Conservation Recovery Act (“RCRA”) Closure Plan for the Paragon Paint Building, due to the Site’s designation as a Large Quantity Generator (“LQG”) of hazardous waste. Hazardous wastes are defined as substances known to be harmful to human health and the environment when not managed properly. The Closure Plan focused on removal of contamination resulting from the

manufacture of paints and varnish and the storage of hazardous waste prior to off-site shipment and disposal.

Economic Analysis

The Economic Analysis Report submitted as part of this application estimates the remediation costs resulting from the unique environmental conditions as \$18.5 million. With soft costs of \$1.5 million, and the total premium costs are approximately \$20 million.

Variations Requested

Use: The applicant is requesting a variance to permit residential use (Use Group 2) within an M1-4 District.

FAR: The underlying FAR is 6.5 for community facility use, 2.0 for commercial use, and 2.0 for manufacturing use. A variance to permit a total FAR of 5.50 FAR is requested, which is roughly equivalent to the FAR of 6.02 permitted for waterfront lots in R8 districts and less than the permitted community facility FAR.

Building Height: Waterfront zoning bulk controls within M1-4 districts have a maximum base height of 60 ft. and a maximum building height of 110 ft. In conjunction with the requested floor area variance, the applicant is requesting a variance to permit a maximum building height of 300 ft., which is consistent with high density residential districts along the waterfront. The variance will permit a tall, thin residential tower which will minimize visual obstruction of the waterfront in the vicinity.

Floor Plate: Waterfront zoning limits the size of any story above the maximum permitted base height to a maximum of 7,000 sf. The Proposed Development consists of three (3) buildings, two of which are connected at the lower floors and are therefore a single building for the purposes of this section. Above the maximum base height of 60 ft., the South Building along 46th Avenue has a story with a ,614 sf. and the connected the Anabel Tower has a story with 6,817 sf. Separately, these floor plates comply. However the aggregate floor area is 11,433 sf, which requires a variance.

Width of Wall Facing the Shoreline: Waterfront zoning bulk controls the total width of any story above the maximum base height facing the shoreline to a maximum of 100 ft.

Loading Berth Requirements: The Applicant seeks to waive the requirements to provide required loading berths for developments with commercial floor area. M1-4 districts require loading berths for developments with commercial floor area in excess of 12,000 sf and the Proposed Project total's 13,228 sf of commercial floor area. The provision of a loading dock would negatively impact the site plan and Waterfront Public Access Area.

DOB Objections

The decision of the Department of Buildings (“DOB”), dated September 2, 2015 acting on DOB Application No. 420654456, reads in pertinent part:

1. Objection: The proposed mixed use buildings, within a M1-4 District, have a primary use of Residential (UG2) contrary to the permitted use provisions of Section ZR 43-122
2. Objection: The proposed mixed use buildings, within a M1-4 District, proposes 5.67 FAR for residential and 0.25 FAR for commercial for a total of 5.92 FAR contrary to Sections ZR 43-12 and ZR 62-326
3. Objection: The proposed mixed use buildings do not provide a loading berth required for the proposed 12,745 sf of commercial use contrary to the provisions of Section ZR 44-52.
4. Objection: The proposed mixed use buildings, within a M1-4 District, have building heights of 85 ft., 135 ft., and 294 ft., of which the proposed 135 ft. and 294 ft. buildings are contrary to the provisions of Section ZR 62-314 (Table A).
5. Objection: The proposed mixed use buildings, on a zoning lot of less than 1.5 acres, have a residential story above the permitted maximum base height in excess of 7,000 sf, contrary to the provisions of Section ZR 62-341(c)(4).
6. Objection: The proposed mixed use building of 294 ft. in height, has a width of wall facing the shoreline in excess of 100 ft., contrary to the provisions of Section SR 62-341(c)(5).

Prior BSA and CPC Actions

There are no previous BSA or City Planning Commission actions relative to any portion of the Project Site. There have been several CPC actions that have effected other developments in the neighborhood, most notably to facilitate the developments of both Hunters Point South as well as Queens West, as indicated on the table below:

Summary of Prior CPC Reports		
Cal. No.	Date Issued	Description
C140275 ZMQ	June 11, 2014	49 th Avenue Rezoning
N 140274 ZRQ	June 11, 2014	49 th Avenue Rezoning
C 110253 MMQ	May 22, 2013	Queens West Park Addition
N 130134 ZRQ	April 10, 2013	Special Long Island City Text
N 090304 ZRQ	May 20, 2009	Special Long Island City District Text Amendment
C 080365 HAQ	September 24, 2008	Hunters Point South
C 080364 PCQ	September 24, 2008	Hunters Point South
C 080362 ZMQ	September 24, 2008	Hunters Point South
C 080276 MMQ	September 24, 2008	Hunters Point South
N 080363 ZRQ	September 24, 2008	Hunters Point South
N 040272 ZRQ	June 23, 2004	Hunters Point Rezoning, Text Amendment
C 040273 ZMQ	June 23, 2004	Hunters Point Rezoning, Map Change

As-of-Right Alternative

The Applicant has explored the possibility of a commercial development without zoning waivers (see “Conforming Drawings”, Exhibit 14). The maximum commercial floor area permitted in the M1-4 district is 2.0 FAR, permitting a 108,996 sq. ft. hotel with approximately 132 keys and ground floor retail. However, due to the remediation costs associated with the contamination of the Project Site, the conforming development (“Hotel Option”) would not be financially feasible.

Respectfully submitted.



Howard Goldman