

299-12-BZ

CEQR #13-BSA-048M

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated September 26, 2012, acting on Department of Buildings Application No. 120801052, reads in pertinent part:

ZR 43-311, ZR 42-312 – 20'-0" rear yard is required for interior portion of lot beyond 100'-0" of front line.

ZR 43-43 – Proposed front wall exceeds 85'-0", applicable sky exposure plane for both wide and narrow streets violated; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for rear yard, height and setback, and sky exposure plane regulations contrary to ZR §§ 43-12, 43-311, 43-312, and 43-43; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in the *City Record*, with continued hearings on November 26, 2013, January 14, 2014, February 11, 2014, and April 8, 2014, and then to decision on May 13, 2014; and

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

WHEREAS, the applicant initially proposed to construct a 12-story commercial building with a total floor area of 157,280 sq. ft. (6.68 FAR); and

WHEREAS, at hearing, the Board directed the applicant to reduce the requested relief and bulk of the building; and

WHEREAS, in response, the applicant revised the proposal to reflect a floor area of 145,483 sq. ft. (6.18

FAR); and

WHEREAS, at hearing, the Board directed the applicant to further reduce the request for relief so as to reflect the minimum variance; and

WHEREAS, the current proposal reflects a ten-story commercial building with a total floor area of 117,705 sq. ft. (5.0 FAR), a height of 175 feet to the roof of the tenth floor and 199 feet to the top of the mechanicals, a Use Group 6 retail and restaurant use on the cellar, first and second floors, and Use Group 6 office use in the remainder of the building; and

WHEREAS, the proposed building will have the following non-complying parameters: a wall height of 185 feet with no setbacks above 85 feet to a total height of 199 feet after a 10'-0" setback (the minimum required setbacks are 20'-0" along West 13th Street and 15'-0" along West 14th Street and Tenth Avenue); intrusions into the sky exposure plane at West 13th Street, West 14th Street, and Tenth Avenue, and no rear yard (a rear yard with a minimum depth of 20'-0" is required in the 53'-0"-wide portion of the site along the West 13th Street frontage and the second-floor terrace is 4'-6" above the 23'-0" permitted obstruction threshold in the rear yard); and

WHEREAS, Community Board 2, Manhattan, reviewed the applicant's original proposal and recommended a disapproval based specifically an objection to an FAR waiver and to the remaining waivers unless the variance limits any eating and drinking establishment on the site to a maximum size of 3,000 sq. ft.; and

WHEREAS, State Senator Brad Hoylman and former City Council Speaker Christine Quinn provided testimony in opposition to the entire application; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to the initial application, citing concerns about an increase in floor area but did not object to the other waivers; and

WHEREAS, the Greenwich Village Community Task Force testified in opposition to the FAR waiver in the original proposal and in support of the other aspects of this application; and

WHEREAS, the Standard Hotel provided testimony in opposition to the application; and

WHEREAS, a representative of the adjacent owner to the east (450 West 14th Street/the High Line Building) (the "High Line Building") provided testimony in opposition to the proposal, citing concerns about whether or not the site conditions were unique; that a complying building could realize a reasonable rate of return; that the proposed building is not compatible with the area context; and that the requested variance does not reflect the minimum necessary; and

WHEREAS, the site is an L-shaped lot with frontage on Tenth Avenue, West 13th Street and West 14th Street, in an M1-5 zoning district; and

WHEREAS, the site is currently occupied by two

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three-story buildings formerly used for meat processing that are proposed to be demolished; and

WHEREAS, the site has 206 feet of frontage on the east side of Tenth Avenue, 153 feet of frontage on the north side of West 13th Street, 75 feet of frontage on the south side of West 14th Street, and a lot area of 23,541 sq. ft.; and

WHEREAS, the High Line, an elevated former railroad trestle, with a height of 25 feet, extends diagonally across the eastern part of the site, including the entire eastern lot line, such that the site has an irregular shape, as discussed below; and

WHEREAS, the City owns the High Line and has converted it into a publicly accessible open space; and

WHEREAS, the applicant states that it is adjacent to the Gansevoort Historic District, but not within it and that it is located within the New York State and National Register of Historic Places Gansevoort Historic District; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of the High Line, which cuts diagonally across the site, reduces the developable lot area, and contributes to the irregular-shape of the developable portion of the site; and (2) the subsurface conditions including poor soil and contamination; and

WHEREAS, as to the presence of the High Line and the site's irregular shape, the applicant notes that the High Line crosses diagonally over the eastern edge of the site, overlapping approximately ten percent of its area; and

WHEREAS, the applicant notes that no foundation work may take place in the area occupied by the High Line; and

WHEREAS, additionally, the applicant asserts that the physical constraints imposed by the High Line require the building to be narrower and taller than would otherwise be necessary on an unencumbered lot of its size; and

WHEREAS, the applicant asserts that the irregular shape with three separate street frontages and 50 percent of its interior lot line border traversed by the High Line contribute to premium construction costs and site inefficiencies; and

WHEREAS, further, the applicant notes that the northern half of the site beyond the centerline of the block is only 75 feet deep, the shallowest site on the block; and

WHEREAS, the applicant states that the shallow depth and the setback requirements result in small floor plates above the initial setback for an as of right building; and

WHEREAS, the applicant provided a floor plate

study which reflects that the functional floor plate area is reduced to widths of 21 feet and 17 feet above the initial setback; and

WHEREAS, the applicant compares this to an as-of-right building on a site without the High Line and office use floor plates could reach approximately 22,000 sq. ft. compared to 12,878 sq. ft. for the proposed; and

WHEREAS, as to the uniqueness of the condition, the applicant asserts that large portions of the Special West Chelsea District north of West 16th Street were rezoned from M1-5 to commercial districts in which residential use is permitted at base FARs ranging from 5.0 to 7.5, up to 6.0 to 10.0, with bonuses; and

WHEREAS, the applicant notes that many West Chelsea District sites are also permitted to transfer unusable floor area to other sites; and

WHEREAS, the applicant asserts that the site is the last undeveloped parcel surrounding the Washington Grasslands section of the High Line, which stretches from West 12th Street to West 13th Street; and

WHEREAS, the applicant states that every other site is either completely covered by the High Line or not a soft site; and

WHEREAS, the applicant states that the waivers are required to offset premium costs associated with construction on the irregularly-shaped site traversed by the High Line and to allow for a more efficient building design that provides for the building mass to be pulled away from the High Line and towards Tenth Avenue; and

WHEREAS, several of the High Line's support columns extend to grade within the boundaries of the subject site, such that any use below it is limited; and

WHEREAS, the applicant states that due to the physical constraints posed by the High Line, a resultant as-of-right building would provide an inefficient building envelope, requiring an irregularly-shaped footprint; and

WHEREAS, further, the High Line limits the applicant's ability to position the building on the site, thus the applicant is unable to distribute the bulk within a complying envelope that has both reasonably-sized and uniform floor plates, due to the presence of the High Line across ten percent of the site; and

WHEREAS, the applicant states that compliance with the rear yard regulations would not only result in irregular and less marketable floor plates, but would also leave a small, isolated yard area at the northeast corner of the subject site that would be difficult to use and maintain; and

WHEREAS, the applicant further states that much of the subject rear yard is already encumbered by the High Line, and that because the proposed building will not span the High Line, light and air will be provided to occupants of the building and neighboring buildings; and

WHEREAS, the applicant represents that even with the bulk waivers, the building is taller and narrower than a building on a site not traversed by the High Line due to the reduced developable portion of the site; and

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WHEREAS, the applicant represents that larger floor plates are required to achieve greater efficiency, as the small size of the as-of-right floor plates make it difficult to amortize construction costs; and

WHEREAS, as to the subsurface soil conditions, the applicant states that the site is burdened by contamination and poor soil conditions which require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant states that its Phase I Report reflects that a gas station north of the site across West 14th Street has had a gasoline spill, with gasoline-related contaminants remaining in the soil and groundwater at significant concentration; and

WHEREAS, the applicant states that due to high water table conditions at the site and the need for dewatering during excavation and construction, contaminated water will be drawn up through the subsurface and will require costly treatment; and

WHEREAS, the applicant states that the groundwater contamination associated with the gasoline spill will require a vapor barrier and a sub-slab depressurization system as part of the foundation design; and

WHEREAS, the applicant represents that there are at least two unregistered underground storage tanks (USTs) located under the Tenth Avenue sidewalk, which must be decommissioned and removed; and

WHEREAS, the applicant states that New York State Department of Environmental Conservation assigned a spill number related to the USTs and the Phase II reflects that approximately 200 tons of soil must be excavated from the site; and

WHEREAS, additionally, the applicant states that the existing buildings contain refrigerant piping lining the walls and other potential hazardous materials that require special handling and disposal; and

WHEREAS, the applicant states that the site is burdened by poor soil conditions that require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant submitted a report from its engineering consultant stating that soil borings indicate that sand is located on the site in the area and is likely liquefiable; and

WHEREAS, accordingly, the applicant states that the piles will likely need to extend through this liquefiable zone and that pile design cannot rely on friction between the soil and pile within the liquefiable zone; such piles are longer and more costly than typical piles for comparable sites in the area; and

WHEREAS, the applicant states that the adjacent buildings to the west and north will require underpinning which, due to the poor soil conditions, will likely involve drilled piles spaced every eight feet, with the foundations of the adjacent structures supported on new grade beams

cast against/under the existing foundations and spanning between the new piles; and

WHEREAS, as to the uniqueness of the soil conditions, the applicant states that although a similar zone of probable liquefaction exists nearby, other recent construction such as the Standard Hotel is within a “liquefaction unlikely zone;” and

WHEREAS, the applicant states that the Standard Hotel is supported on drilled micro-piles that obtain capacity via friction in the sand layer and the columns that support the hotel are supported by higher capacity drilled mini caissons bearing in the bedrock; but, in contrast, the piles for the subject building would have to extend through the liquefiable zone and require piles that are longer and more costly than comparable piles on the Standard Hotel site; and

WHEREAS, in support of these assertions, the applicant submitted copies of soil reports related to the variance for 437-447 West 13th Street under BSA Cal. No. 314-08-BZ in 2009 and the Standard Hotel; and

WHEREAS, the applicant asserts that the requested waivers are required to allow for a more efficient building with more rentable office area at a complying FAR; and

WHEREAS, the applicant states that the design with higher floor to ceiling heights and a greater percentage of perimeter office area, which allows the building to generate sufficient income to overcome the premium construction costs of approximately \$6.3 million and inefficiencies associated with the unique conditions of the site; and

WHEREAS, as to the uniqueness of these soil conditions, the applicant’s research reflects that recent developments in the vicinity of the site were either able to utilize previously existing building foundations for the new construction, or were not located in a probable liquefiable zone, and therefore could use shorter piles than the subject site; and

WHEREAS, the High Line Building asserts that the West 13th Street variance, which relied on certain similar hardship conditions as the subject site, undermines the applicant’s claims of uniqueness; and

WHEREAS, the Board disagrees, noting that a finding of uniqueness, does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district’s zoning (see Douglaston Civ. Assn. v. Klein, 51 N.Y.2d 963, 965 (1980); and

WHEREAS, based upon the above, the Board finds that the presence of the High Line, the irregular shape of the developable portion of the lot, and the poor soil conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a

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feasibility study that analyzed: (1) a complying commercial development on the subject lot; (2) the original 6.68 FAR commercial development with height and setback waivers; (3) a complying commercial development on a lot without a hardship; (4) a lesser variance scenario with only an FAR waiver; and (5) a lesser variance scenario with only height and setback waivers; and

WHEREAS, the applicant concluded that only the 6.68 FAR scenario would realize a reasonable rate of return; and

WHEREAS, in response to the Board's concerns, the applicant revised its analysis to include first a 6.18 FAR scenario and ultimately the proposed 5.0 FAR scenario; and

WHEREAS, the Board also raised concerns about assigning premium costs to the proposed design choices not associated with the hardship at the site; and

WHEREAS, in response, the applicant excluded any premium costs associated with specific design choices; and

WHEREAS, the High Line Building submitted a financial analysis which questioned the applicant's conclusions including, specifically, the capitalization rate, the cost valuations and the underlying formulas; and

WHEREAS, in response, the applicant notes that due to the risk in speculative commercial development, a higher, more conservative, capitalization rate is appropriate; the applicant states that its data source is derived from surveys of investors in similar development projects; and

WHEREAS, the applicant concluded that none of the as-of-right scenarios would result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed building would realize a reasonable return and has submitted evidence in support of that assertion; and

WHEREAS, the Board has reviewed the applicant's revised analysis and assumptions and finds that they are consistent with financial analyses that the Board has accepted for similar variance applications; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; 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; and

WHEREAS, as to bulk, the applicant represents that the proposed height of 175 feet to the roof of the tenth floor and 199 feet to the top of the rooftop

mechanicals and 5.0 FAR are compatible with the neighborhood character; and

WHEREAS, the applicant notes that 5.0 FAR is permitted pursuant to underlying zoning district regulations; and

WHEREAS, the applicant notes that the Standard Hotel, an 18-story hotel building located immediately south of the subject site is built to a height of 271 feet; and

WHEREAS, the applicant represents that the scale and bulk of the proposed building is similar to that of the Standard Hotel and the High Line Building, a 14-story retail office building northwest of the project site, with a height of 221 feet; and

WHEREAS, the applicant asserts that the proposed design is more compatible with the surrounding area than a complying building would be as it will protect easterly and southerly light and air to this segment of the High Line and protects southwesterly light, air, and views for this section of the High Line; and

WHEREAS, the applicant states that although the Environmental Assessment Statement does not predict any significant environmental impacts to the High Line from construction at the site due to the fact that the Washington Grasslands area is planted with shade-tolerant grasses and flowers, the applicant proposes to carve out a portion of the building to maintain more daylight on the High Line than would be provided by the complying design without a carve out; and

WHEREAS, the applicant notes that the proposed design sets back the portion of the building closest to the High Line to preserve the light and air access; and

WHEREAS, the applicant states that its engineering consultant performed a study with three-dimensional models of the proposal, an as-of-right building; and a building with a complying setback/non-complying FAR building to determine the annual potential for solar exposure; and

WHEREAS, the applicant states that the study depicts the total number of hours of direct sunlight that could potentially reach the Washington Grasslands section under each scenario and concluded that the as-of-right and FAR variance buildings had more significant impact on the High Line than the proposal which shifts the bulk of the building to the Tenth Avenue frontage and includes an angled carve-out on the lower levels; and

WHEREAS, the applicant notes that the height and setback waivers are primarily attributed to the design which pulls the bulk of the building off of the High Line and onto Tenth Avenue, a wide street; and

WHEREAS, as noted, the majority of the required rear yard at the interior corner of the site is actually traversed by the High Line and only a very small portion remains that would be impractical to remain undeveloped; and

WHEREAS, due to the site's location within the State/National Register Gansevoort Market Historic

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District, the Landmarks Preservation Commission (LPC) confirmed its review of the proposed demolition of the existing buildings on the site by letter dated December 13, 2013; and

WHEREAS, the High Line Building raised concerns that the applicant has not established a context for the FAR or building height and that a proposed outdoor commercial space would not be compatible with the High Line; and

WHEREAS, the Board is not persuaded by the applicant's assertions and finds that the applicant has established a context for the proposed FAR and building height; specifically, the Board notes that the revised proposal for 5.0 FAR complies with zoning district regulations and that, as noted above, the High Line Building is among those with heights greater than 199 feet in the immediate vicinity; the Whitney Museum also has a proposed height of 199 feet; and

WHEREAS, the Board notes that the as-of-right building could have greater impact on the High Line Building by obscuring lot line windows and reaching a height of 267 feet; and

WHEREAS, in contrast, the proposed building sets back from the High Line Building by approximately 16 feet along its western façade; and

WHEREAS, as to the proposed outdoor commercial space, the Board notes that it is a conforming use in the zoning district and that the height of the outdoor terrace was designed to be compatible with the High Line and only requires a waiver for the portion that is within the required rear yard; 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 the hardship herein was not created by the owner or a predecessor in title, but is due to the proximity of the High Line, the irregularity of the subject lot, and the subsurface soil conditions on the site; and

WHEREAS, as noted above, the applicant initially proposed to construct a building with a floor area of floor area of 157,280 sq. ft. (6.68 FAR), which required a waiver of the FAR due to the zoning district maximum of 5.0 FAR; and

WHEREAS, the High Line Building raised concerns that as the FAR was reduced, the height should also have been reduced in order to reflect the minimum variance; and

WHEREAS, the Board notes that the applicant does not seek a height waiver and that the proposed building height is 20 to 45 feet lower than that of the High Line Building; and

WHEREAS, accordingly, the Board finds that this

proposal is the minimum necessary to afford the owner relief; 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 I 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. 13BSA048M, dated May 5, 2014; 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, the site is located in the State/National Register Gansevoort Market Historic District, and the buildings on the site are to be demolished for the proposed project; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") has reviewed the Environmental Assessment Statement ("EAS") and the Historical Documentation Alternatives Analysis and Mitigation Plan, dated May 2, 2014 and concurs with the findings that there are no feasible or prudent alternatives to demolition; and

WHEREAS, LPC has requested a Historic American Building Survey ("HABS") Level II documentation for buildings to be demolished on the site and design review of the proposed new building; and

WHEREAS, according to the EAS and the September 2011 Remedial Action Plan, the site has been submitted for entry into the New York City Brownfield Cleanup Program administered by the Office of Environmental Remediation ("OER"); and

WHEREAS, based on the level of site contamination and the applicant's proposal to construct subject to BCP approval, the Department of Environmental Protection recommends that an E designation for hazardous materials be placed on the site as part of the approval; 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 I Negative

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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 and grants a variance, in an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for rear yard, height and setback, and sky exposure plane regulations contrary to ZR §§ 43-12, 43-311, 43-312, and 43-43, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 19, 2014"- (21) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum height of 175 feet to the roof of the tenth floor; a maximum total height of 199 feet, including rooftop mechanicals; and a maximum total floor area of 117,705 sq. ft. (5.0 FAR), as reflect on the BSA-approved plans;

THAT prior to the issuance by DOB of permits for demolition of the buildings on the site, LPC will have reviewed and approved a scope of work for HABS documentation and reviewed the design of the proposed building;

THAT an E designation (E-334) is placed on the subject site to ensure proper hazardous materials remediation;

THAT prior to the issuance by DOB of permits that involve any soil disturbance, the applicant will receive approvals from OER for the hazardous materials remediation plan and construction-related health and safety plan;

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

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 other applicable provisions of the Zoning Resolution, the Administrative Code, and any

A true copy of resolution adopted by the Board of Standards and Appeals, May 13, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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, May 13, 2014.

