

KRAMER LEVIN NAFTALIS & FRANKEL LLP

CARLYN M. MAKSYMUK
LAND USE PLANNER
PHONE 212-715-7508
FAX 212-715-8000
CMAKSYMUK@KRAMERLEVIN.COM

March 18, 2016

Rec'd By Community Board 2, Man

Via Messenger

MAR 18 2016

Hon. Gale Brewer
Office of the Manhattan Borough President
Municipal Building
1 Centre Street, 19th Floor
New York, NY 10007

Re: 323-327 Avenue of the Americas
(Block 589, Lots 19, 30, and 31)
BSA Cal. # 2016-4138-BZ

Dear Borough President Brewer:

Enclosed please find our recent application to the Board of Standards and Appeals regarding the above-referenced property.

Sincerely,



Carlyn M. Maksymuk
Land Use Planner

cc: Tobi Bergman – Manhattan Community Board 2
Hon. Corey Johnson – City Council Member, 3rd District
Martin Rebholz, R.A. - Department of Buildings
Christopher Holme - Department of City Planning

Received this ____ day of _____, 2016

By: _____

1177 AVENUE OF THE AMERICAS NEW YORK NY 10036-2714 PHONE 212.715.9100 FAX 212.715.8000

990 MARSH ROAD MENLO PARK CA 94025-1949 PHONE 650.752.1700 FAX 650.752.1800

47 AVENUE HOCHÉ 75008 PARIS FRANCE PHONE (33-1) 44 09 46 00 FAX (33-1) 44 09 46 01

WWW.KRAMERLEVIN.COM

KRAMER LEVIN NAFTALIS & FRANKEL LLP

PAUL D. SELVER
PARTNER
PHONE 212-715-9199
FAX 212-715-8231
PSELVER@KRAMERLEVIN.COM

March 16, 2016

Via Hand Delivery

NYC Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: 323-327 Avenue of the Americas
New York, New York
Block 589; Lots 19, 30 and 31

Dear Chair Perlmutter and Commissioners:

In connection with an application for a variance pursuant to ZR Section 72-21 to allow an enlargement of an existing two-story theater building on a zoning lot located partially in a C1-5/R7-2 zoning district and partially in an R6 zoning district, enclosed are one original, two copies and a CD of the following materials:

1. BZ Application Form and a copy of BSA Resolution (Cal. No. 319-08-BZ) and approved drawings;
2. Objections issued by Department of Buildings, dated March 10, 2016;
3. Affidavit of Ownership;
4. Statement of Facts and Findings;
5. Certificate of Occupancy No. 110414999T09, dated January 3, 2013;
6. Economic Analysis Report prepared by J.S. Freeman Associates, Inc.;
7. Zoning Sectional Map 12a;
8. BSA Zoning Analysis Form;

1177 AVENUE OF THE AMERICAS NEW YORK NY 10036-2714 PHONE 212.715.9100 FAX 212.715.8000
990 MARSH ROAD MENLO PARK CA 94025-1949 PHONE 650.752.1700 FAX 650.752.1800
47 AVENUE HOCHÉ 75008 PARIS FRANCE PHONE (33-1) 44 09 46 00 FAX (33-1) 44 09 46 01

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NYC Board of Standards and Appeals
March 16, 2016
Page 2

9. Tax Map;
10. Radius Diagram;
11. Photographs and Photo Key Map;
12. Drawings of the "Existing Conditions," "Conforming Conditions"
(Residential As-of-Right and Community As-of-Right), "Lesser Variance"
and "Proposed Project" prepared by Kliment Halsband Architects;
13. List of Affected Property Owners;
14. Environmental Assessment Statement and Supplemental Studies prepared by
VHB.

Also enclosed are checks payable to the City of New York in the amounts of
\$7,040 and \$2,940 to cover the BSA filing fee and the CEQR filing fee, respectively.

Please call me or Bob Flahive if you have any questions regarding these materials.

Very truly yours,


Paul D. Selver *by Reg*

PDS:rld
Enclosures

cc: Community Board 2 (Manhattan)
City Council Member Corey Johnson
Manhattan Borough President Gale Brewer
Department of Buildings – Manhattan Borough Commissioner Martin Rebholz
Department of City Planning – Christopher Holme, Zoning Division



**Board of Standards
and Appeals**

250 Broadway, 29th Floor
New York, NY 10007
212-386-0009 - Phone
646-500-6271 - Fax
www.nyc.gov/bsa

ZONING (BZ) CALENDAR Application Form

BSA APPLICATION NO. _____

CEQR NO. _____

Section A

**Applicant/
Owner**

Kramer Levin Naftalis & Frankel LLP
Paul D. Selver, Esq.

NAME OF APPLICANT

1177 Avenue of the Americas

ADDRESS

New York NY 10036

CITY STATE ZIP

212 715-9199

AREA CODE TELEPHONE

212 715-7832

AREA CODE FAX

pselver@kramerlevin.com

EMAIL

323 Sixth LLC

OWNER OF RECORD

c/o Friedland Properties, 500 Park Ave, 11 Fl

ADDRESS

New York NY 10022

CITY STATE ZIP

IFC Center

LESSEE / CONTRACT VENDEE

323-27 Avenue of the Americas

ADDRESS

New York NY 10014

CITY STATE ZIP

Section B

**Site
Data**

323-27 Avenue of the Americas

10014

STREET ADDRESS (INCLUDE ANY A/K/A)

ZIP CODE

Throughblock lot between Avenue of the Americas and Cornelia Street, south of West 4th Street

DESCRIPTION OF PROPERTY BY SOUNDING OR CROSS STREETS

589

19, 30, 31

Manhattan

2

Greenwich Village H.D. II

BLOCK

LOT(S)

BOROUGH

COMMUNITY DISTRICT

LANDMARK/HISTORIC DISTRICT

C. Johnson

R7-2/C1-5; R6

12a

CITY COUNCIL MEMBER

ZONING DISTRICT

ZONING MAP NUMBER

(include special district, if any)

Section C

**Dept of Building
Decision**

BSA AUTHORIZING SECTION(S) 72-21 for ☒ VARIANCE ☐ SPECIAL PERMIT (Including 11-41)

Section(s) of the Zoning Resolution to be varied 22-10; 32-31; 32-421; 33-121; 33-431; 33-26; 33-283

DOB Decision (Objection/ Denial) date: _____ Acting on Application No: _____

Section D

Description

(LEGALIZATION ☐ YES ☒ NO ☐ IN PART)

The Application requests use and bulk variances to allow the enlargement of the existing IFC Center in a two-story building that was constructed around 1853 and has operated as a motion picture theater since 1938.

Section E

**BSA History
and
Related Actions**

If "YES" to any of the below questions, please explain in the STATEMENT OF FACTS

YES NO

1. Has the premises been the subject of any previous BSA application(s)? ☒ ☐

PRIOR BSA APPLICATION NO(S): 319-08-BZ

2. Are there any applications concerning the premises pending before any other government agency?..... ☐ ☒

3. Is the property the subject of any court action?..... ☐ ☒

Section F

Signature

I HEREBY AFFIRM THAT BASED ON INFORMATION AND BELIEF, THE ABOVE STATEMENTS AND THE STATEMENTS CONTAINED IN THE PAPERS ARE TRUE.

SWORN TO ME THIS 11th DAY OF March 2016

Signature of Applicant, Corporate Officer or Other Authorized Representative

Paul D. Selver

Partner

Notary Public, State of New York

Print Name

Title

NO. 00000758315

Qualified in Dutchess County

Commission Expires April 30, 2018

***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

319-08-BZ

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.

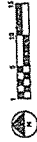
CERTIFIED RESOLUTION



Chair/Commissioner of the Board

2000 DEC 01 PM 1:02

3010-20-R7



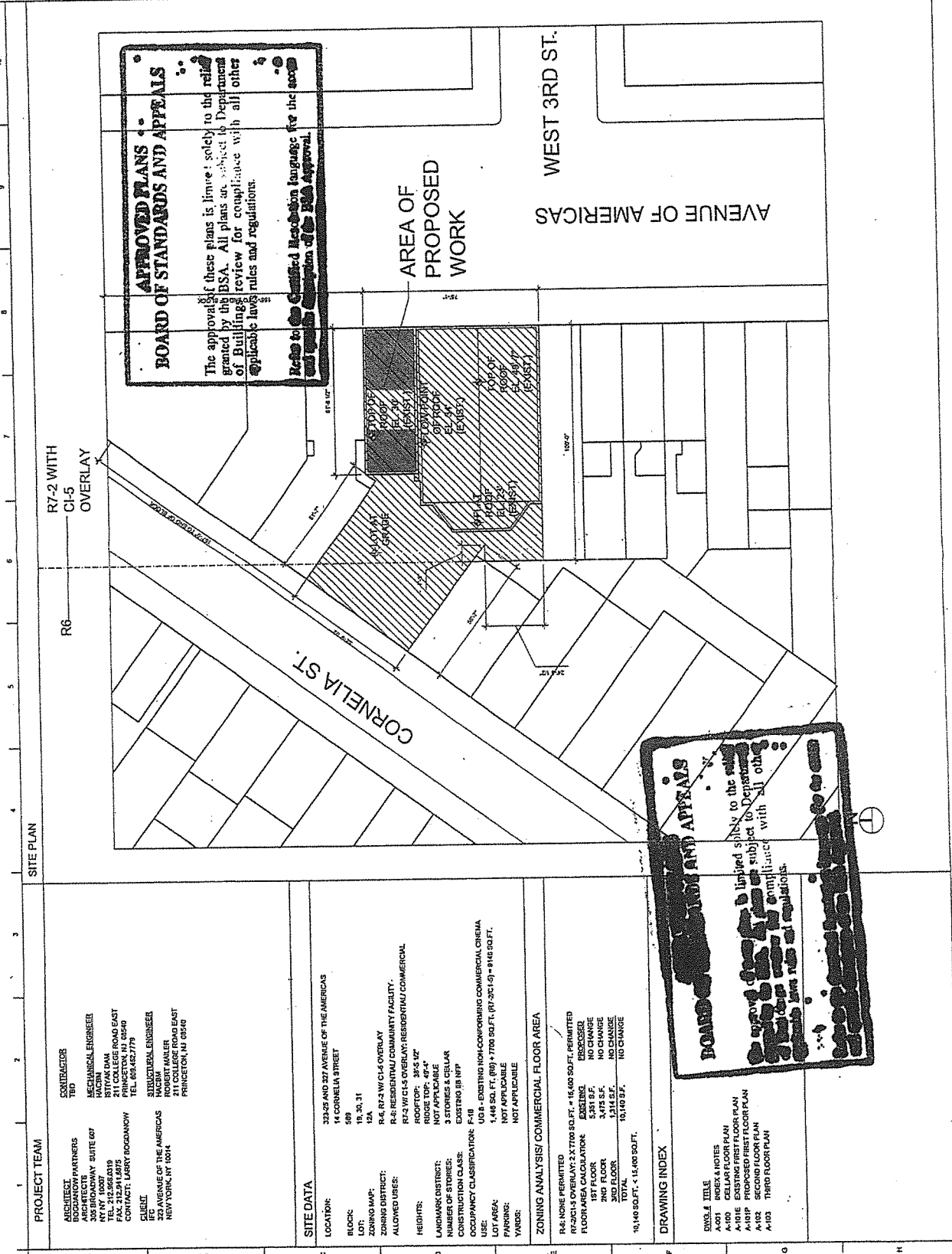
DOOR	0000000000
WALL	0000000000
FLOOR	0000000000
CEILING	0000000000
ROOF	0000000000
FOUNDATION	0000000000
MECHANICAL	0000000000
ELECTRICAL	0000000000
PLUMBING	0000000000
PAINT	0000000000
LANDSCAPE	0000000000
INTERIOR	0000000000
EXTERIOR	0000000000

IFC CENTER

333 AVENUE OF THE AMERICAS
NEW YORK, NY 10014

TITLE PAGE
AND INDEX

A-001



2000 DEC 31 PM 12:50



DOB# XXXXXXXXX	LOT: 19, 30, 31	
BLOCK# 689		
FOR REVIEW	06-22-09	
FOR REVIEW	06-23-09	
FOR REVIEW	06-24-09	
FOR REVIEW	06-27-09	
FOR REVIEW	06-28-09	
FOR REVIEW	06-29-09	
FOR REVIEW	06-30-09	

IFC CENTER

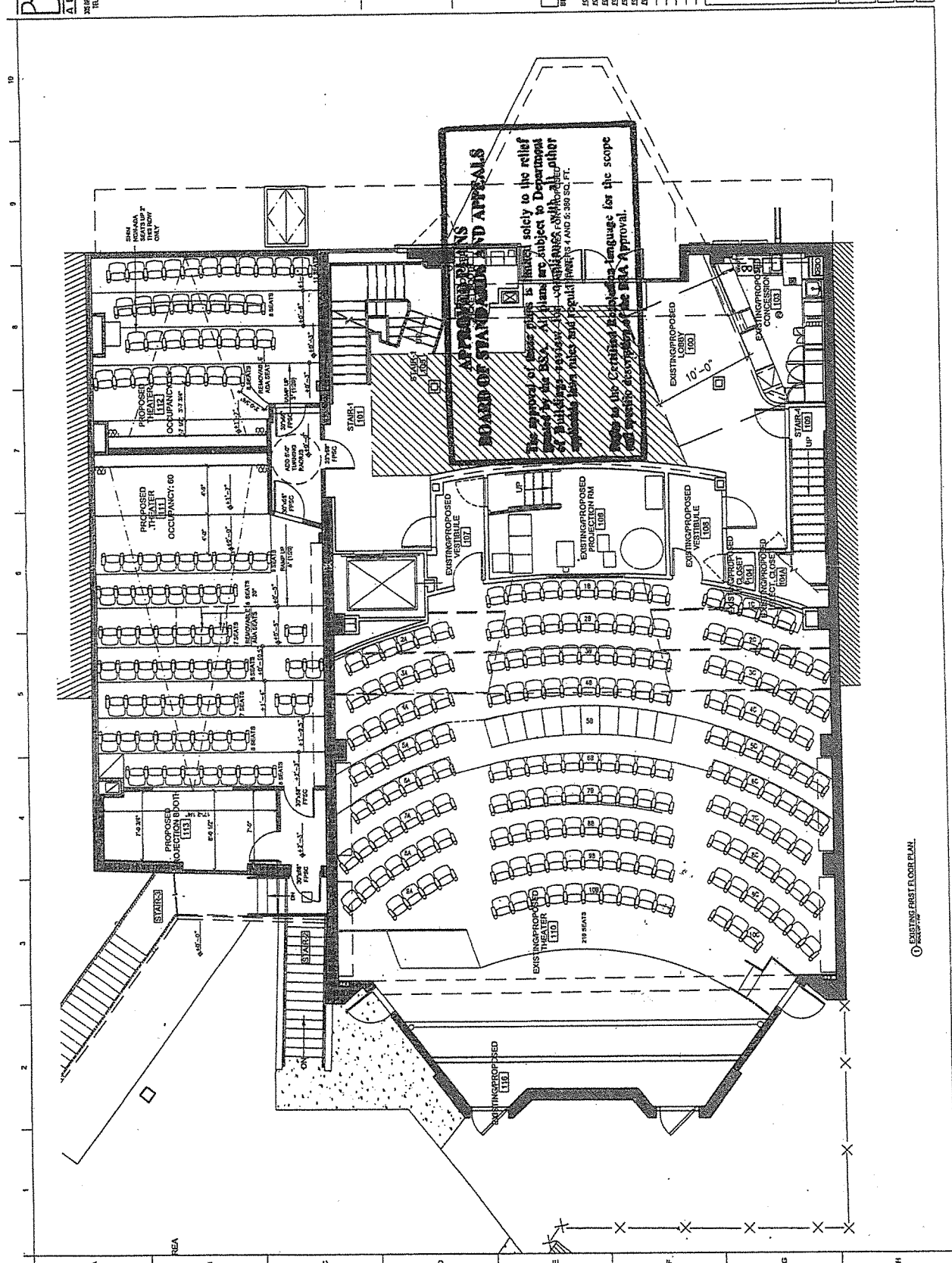
AVENUE OF THE AMERICAS
NEW YORK, NY 10014

PROPOSED FIRST FLOOR PLAN

A-101P

WOMEN

6170541



1 EXISTING FIRST FLOOR PLAN
ROOM NO. - 101



Department of Buildings
280 Broadway
New York, New York 10007
(212) 566-5000 | TTY (212) 566-4769
nyc.gov/buildings

MANHATTAN (1)
280 BROADWAY 3RD FLOOR
New York, NY 10007

BRONX (2)
1932 ARTHUR AVENUE
BRONX, NY 10457

BROOKLYN (3)
210 JORALEMON STREET
BROOKLYN, NY 11201

QUEENS (4)
120-55 QUEENS BLVD.
QUEENS, NY 11424

STATEN ISLAND (5)
BORO HALL- ST. GEORGE
STATEN ISLAND, NY 10301

Notice of Objections

Applicant ALEJANDRO DIEZ
322 EIGHTH AVENUE NEW YORK NY 10001

Date: 03/10/2016
Job Application #:122507769
Application type:ALT-1 enlgm. And reno. of existn. bld
Premises Address: 323 6 AVENUE
Zoning District: R7-2, C1-5
Block: 589 Lot: 31 Doc(s):

NYC Department of Buildings Examiner:

Examiner's Signature : Simon Awofesobi	
To discuss and resolve these objections, please call 311 to schedule an appointment with the Plan Examiner listed above. You will need the application number and document number found at the top of this objection sheet. To make the best possible use of the Plan Examiner's and your time, please make sure you are prepared to discuss and resolve these objections before arriving for your scheduled plan examination appointment.	

Obj. #	Doc #	Section of Code	BSA Objections	Date Resolved	Comments
1.			Scope of Work APPLICATION FILED FOR THE ENLARGEMENT AND RENOVATION OF EXISTING BUILDING AS SHOWN ON PLANS FILED HERewith		
2.		ZR 22-10	ZR 22-10: Proposed use group 8 (theater) not permitted in R6 zoning district		
3.		ZR 32-31	ZR 32-31: Proposed use group 8 Theater) exceeds the 500 seats permitted by special permit in C1-5 zoning district		
4.		ZR 32-421	Proposed use group 8 (theater) is limited to two stories in C1-5 zoning district		
5.		ZR 33-121	Proposed commercial floor area exceeds 2.0 FAR maximum permitted in C1-5 zoning district.		
6.		ZR 33-431	Proposed use group 8 (Theater) is limited to a height of 30 feet or two stories, which ever is less, in C1-5 zoning district		
7.		ZR 33-26	ZR 33-26: Proposed enlargement encroaches in required rear yard of the interior portion of zoning lot.		
8.		ZR 33-283	ZR 33-283: Proposed enlargement encroaches in required rear yard equivalent of through of through lot portion of of zoning lot.+564		

DENIED

FOR APPEAL TO BOARD OF STANDARDS AND APPEALS

DATE 3/10/2016
PER **CPK**
Borough Commissioner



250 Broadway, 29th Floor
New York, NY 10007
212-386-0009 - Phone
646-500-6271 - Fax
www.nyc.gov/bsa

AFFIDAVIT OF OWNERSHIP AND AUTHORIZATION

Affidavit of Ownership

WILLIAM FRIEDLAND, being duly sworn, deposes and says that (s)he resides at _____, in the City of NEW YORK, in the County of NEW YORK, in the State of NEW YORK; that 323 SIXTH LLC is the owner in fee of all that certain lot, piece or parcel of land located in the Borough of Manhattan, in the City of New York and known and designated as Block 589, Lot(s) 19,30 & 31, Street and House Number 323-27 Sixth Avenue; and that the statement of facts in the annexed application are true.

Check one of the following conditions:

- ☒ Sole property owner of zoning lot
☐ Cooperative Building
☐ Condominium Building
☐ Zoning lot contains more than one tax lot and property owner

Owner's Authorization

The owner identified above hereby authorizes Paul D. Selver/ Kramer, Levin, Naftalis & Frankel LLP to make the annexed application in her/his behalf.

Signature of Owner

William Friedland

Print Name

WILLIAM FRIEDLAND

Print Title

MANAGER

Sworn to before me this 7 day

Of January 2016

Kerri Shapiro

Revised March 8, 2012

KERRI SHAPIRO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SH6097742
Qualified in Queens County
My Commission Expires August 25, 2019

STATEMENT OF FACTS AND FINDINGS

Re: 323-327 Avenue of the Americas
New York, New York
Block 589; Lots 19, 30 and 31
(the "Subject Premises")

This is an application pursuant to Section 72-21 of the Zoning Resolution of the City of New York (the "Zoning Resolution" or "ZR") and Section 666 of the New York City Charter to vary certain use and bulk regulations to allow an enlargement of an existing two-story theater building that has been operated as a motion picture theater since 1938. The Proposed Project will increase the number of screens in the Independent Film Channel (the "IFC") Center from 5 to 11 and increase the number of seats from 480 to 948.

The Subject Premises is located on an irregular through-block site composed of Tax Lots 19, 30 and 31 on Block 589 with approximately 74 feet 2 inches of frontage on Sixth Avenue and 52 feet 8 inches of frontage on Cornelia Street and with a lot area of approximately 9,146 square feet. The existing IFC Center at 323/325 and 327 Sixth Avenue consists of a two-story (plus cellar) non-conforming motion picture theater on Lots 30 and 31, containing five separate theater spaces with a total seating capacity of 480, and an adjacent open area for parking, storage and related accessory theater uses on Lot 19, which fronts on Cornelia Street. Tax Lots 30 and 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 located in the C1-5/R7-2 zoning district and the western portion located within the adjacent R6 zoning district. Approximately 84 percent of the Subject Premises is within the C1-5/R7-2 zoning district, and 16 percent is within the R6 zoning district.

This application (the “Application”) is seeking a zoning variance because the Proposed Project does not comply with the following use and bulk regulations of the Zoning Resolution: (i) theaters (Use Group 8) are not permitted in the R6 district and are limited to 500 seats in the C1-5 district by BSA special permit; (ii) the maximum permitted commercial floor area in the C1-5 district is 2.0 FAR (15,400 square feet), and the Proposed Project would contain 20,071 square feet; (iii) theaters (Use Group 8) are limited to a height of 30 feet or two stories, whichever is less, in C1-5 districts; and (iv) the Proposed Project encroaches within the required rear yard for the interior portion of the zoning lot and within the required rear yard equivalent for the through lot portion of the zoning lot.

As documented in the materials submitted in support of the Application, the need for the requested variances arises from the irregular configuration of the zoning lot that is split by two zoning districts, the history of development of the Subject Premises and the existing built condition of a non-conforming theater use that has been in operation since 1938. Approval of the requested variances would permit the enlargement of the theater and enable IFC Center (the long-term lessee of the Subject Premises) to achieve a reasonable return from the zoning lot.

The Subject Premises

Historical records indicate that a public building (presumed to be a church) occupied a portion of Lot 31 as early as 1845, that the current structure was constructed circa 1853 by the West Reformed Dutch Church, and that the Union Reform Dutch Church leased the building between 1875 and 1896. The building was then converted into a factory for a manufacturer of

stained glass, J. Lamb Ecclesiastical Art Works, which occupied the building until the 1930's when it relocated to Tenafly, NJ, where it continues to operate to this day as J&R Lamb Studios.

In 1937 the building was converted once again and leased to the Luxor-Bleecker Amusement Corporation. The new "Waverly" motion picture theater opened in 1938 with a marquee installed on the Sixth Avenue façade and operated continually with a seating capacity of 588 and two theater spaces until 2001 (Certificate of Occupancy No. 22867, issued October 7, 1987). According to Certificate of Occupancy No. 58285 issued on September 12, 1963, the two-story building adjacent to the theater at 327 Sixth Avenue (Lot 30) housed a bar and restaurant on the ground floor and one apartment unit on the second floor.

The Waverly was renovated in 2001 to create three separate theater spaces with a combined 385 seats and a new eating and drinking establishment (Use Group 6) in place of the restaurant on Lot 30. The theater reopened as the Independent Film Channel (the "IFC") Center in 2005.

An application for a Special Permit to increase the number of seats by 95 from 385 to 480 and the number of screens from three to five was filed with the Board in December 2008 (BSA Cal. No. 319-08-BZ). A public hearing was held on February 24, 2009, and the Board granted the Special Permit on March 17, 2009 with the following conditions:

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.

In its resolution, the Board noted that granting this special permit would facilitate the expansion of a venue for the showing of independently produced films, enhancing the cultural life of the city. The IFC Center remains a premier venue in New York City for the screening of independent films, including short films and documentaries. However, as described in the letter from the General Manager of the IFC Center (the "Owner's Letter," Exhibit A), the limited size and footprint of the existing building imposes significant constraints in terms of theater layout and operation. The screening of independent films requires a venue that offers a range of theater capacities that can accommodate the wide range of product that is available from producers of documentaries, foreign films and independent American features. The demand for additional screens is generated by both the distributors of these films as well as the audiences for these frequently eclectic film offerings. The Proposed Project will allow the IFC Center to more effectively compete with the other major theaters in Manhattan that show independent films (i.e., Sunshine, Angelika and the Lincoln Plaza Cinemas).

The Surrounding Neighborhood and Study Area

The Subject Premises is located in the heart of the Greenwich Village neighborhood in Manhattan Community District 2 with the West Village to the north and Soho to the south. New York University has a large presence in the area centered around Washington Square Park, a popular 9.75 acre park located approximately 600 feet east of the IFC Center. In addition to this large open space amenity, the Subject Premises faces several smaller recreational areas across Sixth Avenue, including the West 4th Street Basketball Courts, Minetta Playground, and Minetta Green. Additionally, Father Demo Square, the Downing Street Playground, the Passannante Ballfield, and Christopher Park are all located within a 600 foot radius. The area is well-served by transit. An entrance to the West 4th Street Station (A,B,C,D,E,F,M) is located in front of the building just south of the IFC Center entrance on Sixth Avenue. The Christopher St-Sheridan Sq Station of the #1 Line is located one avenue over on Seventh Avenue. Bus service nearby includes the M5 route uptown along Sixth Avenue, M20 downtown service along Seventh Avenue, and the M8 and M21 which run crosstown along 8th Street and Houston Street, respectively.

The surrounding area, within a 600-foot radius of the Subject Premises, is characterized predominantly by residential (both single family and multifamily) and mixed residential/commercial uses. Strictly commercial buildings are found with more frequency along Sixth and Seventh Avenues, including a wide variety of restaurants, bars/clubs, and theaters, notably the Minetta Lane Off Broadway Theater. Several institutional buildings associated with NYU are located closer to Washington Square Park, including NYU Law School. Our Lady of Pompeii is located on Bleecker Street on the block just southeast of the Subject Premises. Several park

spaces mentioned previously line the eastern side of Sixth Avenue from Bleecker Street to West 4th Street. A five-story mixed residential/commercial building with two ground floor tattoo parlors is located just north of the IFC Center at 329 Sixth Avenue; a four-story mixed use building also with ground floor retail is located to the south at 321 Sixth Avenue. Similarly, two five-story mixed use buildings are located on either side of Lot 19 on Cornelia Street, housing a café and a specialty shop. The remainder of the eastern blockfront on Cornelia Street consists of similar buildings, five stories or less with ground floor retail, with the exception of the unique 12-story flat-iron shaped Varitype Building at the corner of West 4th Street and Sixth Avenue (2 Cornelia Street). The blockfront immediately across Cornelia Street from Lot 19 contains primarily row houses turned multi-family walkups and mixed residential/commercial buildings with ground floor retail.

In 2010, the Landmarks Preservation Commission designated the southern section of Greenwich Village, including the block which contains the Subject Premises, in the Greenwich Village Historic District Extension II (LP-2366), largely coveted for its rich history, Federal and Greek Revival style row houses and various tenement styles. Additionally, the MacDougal-Sullivan Gardens Historic District and the Charlton-King-Vandam Historic District are immediately south of the project area.

Alternative Building Scenarios

Kliment Halsband Architects (the “Project Architect”) has analyzed four alternative development scenarios: two “Conforming Development” scenarios (Scheme A – Residential As-of-Right and Scheme B – Community Facility As-of-Right); a “Lesser Variance” scenario for a

residential building that would require a number of bulk waivers (Scheme C – Residential with Bulk Non-Compliances); and the “Proposed Project” (Scheme D) that would enlarge the existing theater and require the use and bulk waivers described in the next section. A description of each of these development scenarios follows.

(i) Scheme A – Residential As-of-Right

As detailed on Drawings A.101 through A.103, this scheme analyzes a five-story (plus cellar) residential building with ground floor lobby and four dwelling units above that has an extremely constrained footprint of approximately 883 square feet on each story in order to meet the rear yard and rear yard equivalent regulations.

(ii) Scheme B – Community Facility As-of-Right

As depicted on Drawings A.201 through A.203, this scheme analyzes a one-story (plus cellar) community facility with a footprint of approximately 1,955 square feet.

(iii) Scheme C – Residential with Bulk Non-Compliances (the “Lesser Variance”)

As depicted on Drawings A.301 through A.303, the Lesser Variance scenario analyzes a five-story (plus cellar) residential building with five dwelling units with a footprint of approximately 1,583 square feet. This scenario requires waivers of the rear yard equivalent, the required minimum distance between buildings on a zoning lot, the regulations governing the distribution of floor area on split lots and the lot coverage and maximum base height before setback of the Quality Housing Option regulations for zoning lots on narrow streets in R6 districts (collectively, the “Lesser Variance Alternative with Bulk Waivers”).

(iv) Scheme D – Proposed Project

The existing IFC Center has five theaters that range in size from 35 seats to 210 seats with a combined capacity of 480 seats. The existing building was designed as a church and was constructed around 1853. It has operated as a theater since 1938, and the current operator has altered the existing building twice since 2001 in an effort to serve the niche market of independent film goers. However, the limited size and footprint of this 160-year-old building imposes significant constraints in terms of theater layout and operation. The size and arrangement of the existing five theaters reflect the physical constraints of the structure, rather than an optimum size and layout to present a varied film product. The footprint of the existing building is also extremely inefficient in terms of patron circulation. In particular, it does not provide sufficient lobby space for queuing prior to show times, thereby forcing patrons to wait in lines on the sidewalk outside the theater and reducing theater revenues by precluding many patrons from making a purchase at the concession stand. Managing the flow of patrons through those small and congested common spaces increases operating costs because it requires additional staff, even with the careful staggering of screening times.

The Proposed Project involves constructing a three-story (plus cellar) addition on the vacant portion of the site that fronts on Cornelia Street. The addition would be 60 feet in height, including mechanical equipment and a full height acoustic barrier around the equipment, and would match the cornice line of the adjoining buildings on Cornelia Street. The enlargement would add six additional theaters, ranging in size from 48 to 142 seats; the total seating capacity would increase from 480 to 948 seats. A new elevator, toilet facilities and other patron amenities would be provided, and all of the theaters will be fully accessible. The entrance/exit will remain

on the Avenue of Americas frontage but will be reconfigured to improve the flow of patrons into and out of the theater. A new ground floor waiting area of approximately 1,865 square feet in the Cornelia Street portion of the complex would provide a central interior waiting space that will obviate the need for patrons to queue on the sidewalk after purchasing their tickets. The qualifying waiting areas provided within the complex total approximately 6,242 square feet, which is approximately 165% more than the required four square feet per seat (3,792 square feet) pursuant to ZR Section 32-17. As indicated on Drawing A.410, waiting areas are also provided adjacent to the theater entries on each of the four levels, which will significantly improve the flow of patrons into and out of the theaters and relieve the current points of congestion.

As detailed on Drawings A.401 through A.406, the Proposed Project would increase the number of theaters from five (with 480 seats) to 11 (with 948 seats) and would require a waiver of several use and bulk regulations as described in the next section.

Department of Buildings' Objections and Requested Variances

The Department of Buildings issued the following objections on March 10, 2016 with respect to the Proposed Project (Job Application #122507769).

- **ZR 22-10: Proposed use group 8 (theater) not permitted in R6 zoning district.**

The Proposed Project locates 238 seats and 3,846 square feet of use group 8 floor area on the portion of the zoning lot in the R6 district.

- **ZR 32-31: Proposed use group 8 (theater) exceeds the 500 seats permitted by special permit in C1-5 zoning district.**

The Proposed Project locates 710 seats and 16,225 square feet of use group 8 floor area on the portion of the zoning lot in the C1-5 zoning district.

- **ZR 32-421: Proposed use group 8 (theater) is limited to two stories in C1-5 zoning district.**

The Proposed Project has three stories (and a cellar) in the enlargement on Cornelia Street.

- **ZR 33-121: Proposed commercial floor area exceeds 2.0 FAR maximum permitted in C1-5 zoning district.**

The permitted commercial floor area generated by the portion of the zoning lot in the C1-5 district is 15,400 square feet (2.0 FAR). The Proposed Project totals 20,071 square feet of floor area, which includes 16,225 square feet in the C1-5 zoning district and 3,846 square feet in the R6 zoning district.

- **ZR 33-431: Proposed use group 8 (theater) is limited to a height of 30 feet or two stories, whichever is less, in the C1-5 zoning district.**

The Proposed Project extends to a height of approximately 51 feet (plus a nine-foot-high parapet to screen the rooftop mechanical equipment) on Cornelia Street.

- **ZR 33-26: Proposed enlargement encroaches in required rear yard of the interior portion of the zoning lot.**

The Proposed Project encroaches in the required rear yard in two interior lot portions of the zoning lot as indicated on the drawings filed with this Application.

- **ZR 33-283: Proposed enlargement encroaches in required rear yard equivalent of the through lot portion of the zoning lot.**

The Proposed Project encroaches in the required rear yard equivalent of the through lot portion of the zoning lot as indicated on the drawings filed with this application.

Statement of Findings Pursuant to ZR Section 72-21

The following is a statement of how each of the five variance findings required under Section 72-21 of the Zoning Resolution is satisfied in this case:

- A. There are unique physical conditions or exceptional topographical conditions peculiar to and inherent in the Zoning Lot which create practical difficulties and unnecessary hardship in complying with the applicable use regulations of the Zoning Resolution which are not due to circumstances created generally by the strict application of the provisions of the Zoning Resolution in the neighborhood or district in which the Zoning Lot is located**

The uniqueness finding of Section 72-21(a) is satisfied by the irregular configuration of the zoning lot that is split by two zoning districts, the history of development of the Subject Premises and the existing built condition of a non-conforming theater use that has been in operation since 1938. As documented in the materials filed with this Application, strict compliance with the current zoning regulations would entail practical difficulties and prevent the Applicant from obtaining a reasonable return on the Subject Premises.

The Board has frequently found that existing development constitutes a “unique physical condition” inherent in a zoning lot causing a practical difficulty or unnecessary hardship. Examples of other cases where the Board has found that existing development has satisfied the uniqueness requirement of Section 72-21(a) include: The American Baptist Churches of Metropolitan New York, 527-31 West 22nd Street, Manhattan (BSA Cal. No. 217-92-BZ) (a use variance to permit a partially demolished, obsolete 100 year old warehouse building to be converted to a residence for homeless persons with AIDS); 744-746 Greenwich Street, Manhattan (BSA Cal. No. 9-95-BZ) (pre-existing non-conforming vacant garage building on split lot allowed to be enlarged into a residential district to accommodate non-conforming photographic studio); 86th Street East Theaters, 210 East 86th Street, Manhattan (BSA Cal. No. 62-96-BZ) (office/theater building with non-conforming theater allowed to be enlarged to accommodate two additional screens in a residential district); 6002 Fort Hamilton Parkway,

Brooklyn (BSA Cal. No. 363-04-BZ) (variance of use regulations to permit conversion of an obsolete industrial building in an M1-1 district to residential use); 98 Montague Street, Brooklyn (BSA Cal. No. 189-12-BZ) (variance of use regulations granted to allow existing 100-year-old building within Brooklyn Heights Historic District to be restored to its original use as a transient hotel in a residential district); and 270 Dyckman Street, Manhattan (BSA Cal. No. 96-14-BZ) (variance of use regulations to allow 100-year old building located partially in a R7-2 zoning lot to be converted to mini-storage).

The courts have, on a number of occasions, upheld the Board's reliance on existing development to satisfy the uniqueness requirement. See, e.g., Guggenheim Neighbors v. Board of Estimate, Index No. 29290/87, (N.Y. Sup. Ct. Jun. 10, 1988) (affirming grant of variance, discussed above, and stating "the appropriateness of looking to such factors as developmental and zoning history and improvements to the property is supported by case law"), *aff'd*, 145 A.D.2d 998 (1st Dep't 1988), *lv. to app. denied*, 74 N.Y.2d 603 (1989); 260 West Broadway Associates v. Board of Estimate of the City of New York, N.Y.L.J., June 7, 1979, at 11, col. 5 (Sup. Ct. N.Y. Co.) (affirming grant of a variance, court upholds the Board's finding of uniqueness based, in part, upon the fact that the "unusual shape of the building, its stairways and its service cars make it unsuitable" for commercial use); 97 Columbia Heights Housing Corp. v. Board of Estimate of the City of New York, N.Y.L.J., Oct. 9, 1984, at 12, col. 5 (Sup. Ct. N.Y. Co.), *aff'd*, 111 A.D.2d 1078 (1st Dep't 1985), *aff'd*, 67 N.Y. 2d 725 (1986) (reinstating variance, court affirms Board's finding that the subject parcel "presented unique physical characteristics owing to the demolition of a ninety year old fire-gutted building whose foundation was initially excavated in a less sophisticated age").

The need for the requested variance arises from factors related to the configuration of the zoning lot, the existing built condition and the history of development, which create practical difficulties and unnecessary hardship in complying with the current zoning regulations.

- B. Because of such physical condition, there is no reasonable possibility that the development of the Subject Premises in strict conformity with the provisions of the Zoning Resolution will bring a reasonable return, and the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such Subject Premises.**

Submitted as part of this Application is an Economic Analysis Report prepared by J.S. Freeman Associates, Inc. (the "Financial Report"), which analyzes the economic feasibility of four development scenarios: a complying residential development; a complying community facility development; the Lesser Variance Alternative with Bulk Waivers; and the Proposed Project. The Financial Report uses the capitalization of income method in order to determine the value and economic feasibility of the four development scenarios. The cost of developing the building, including land acquisition cost, holding and preparation costs, base construction costs, tenant fit out allowance and soft construction costs, is estimated. The estimates of construction costs for each scheme were prepared by McQuilkin Associates and are presented in Exhibit A of the Financial Report. The net operating income is estimated and, after applying an appropriate capitalization rate¹, the capitalized value is established. The economic feasibility of the development is determined by comparing the value created by capitalizing the net operating income with the cost of development. When the capitalized value is equal to or exceeds the

¹ The Financial Report utilized a capitalization rate of 6.50% for the two residential development scenarios and a capitalization rate of 7.00% for the community facility scenario and for the Proposed Project. As documented in the Financial Report, the capitalization rates are based on a survey of lenders and investors taken by RealtyRates.com in the fourth quarter of 2015 and includes both lender and investor expectations.

estimated cost of development, the project is considered economically feasible. If the capitalized value is significantly less than the cost of development, the project is not financially feasible.

As detailed in Drawings A.101 through A.103, the Residential As-of-Right scenario analyzes a five-story (plus cellar) residential building with a trapezoidal footprint that is a product of having to comply with the rear yard equivalent requirements. The extremely constrained footprint is only 883 square feet in area and can only accommodate one studio apartment of 532 square feet per floor. In addition to an awkward layout, the stair and elevation configuration yields a rentable-to-gross efficiency ratio of only 60%. As summarized in Schedule A of the Financial Report, the Residential As-of-Right scenario has a total project development cost (including estimated property value, hard construction costs and soft costs) of \$15,639,000 and the projected income stream from both the residential building and the existing theater only yields a capitalized value of \$13,046,000. The Residential As-of-Right scenario yields significantly less value (\$2,593,000) than the project development cost and therefore is not economically feasible.

Drawings A.201 through A.203 depict a one-story community facility building (the Community Facility As-of-Right scenario). A one-story community facility building up to 23 feet in height is a permitted obstruction in a rear yard equivalent so the building can occupy approximately 1,795 square feet, which is most of Lot 19 except for the required theater egress route to Cornelia Street. As summarized in Schedule A of the Financial Report, the Community Facility As-of-Right scenario has a total project development cost of \$13,694,000 while the projected income stream from both community facility and the existing theater only yields a

capitalized value of \$12,079,000. The Community Facility As-of-Right scenario yields significantly less value (\$1,615,000) than the project development cost and therefore is not economically feasible.

Drawings A.301 through A.303 depicts a five-story (plus cellar) residential building with a footprint of approximately 1,583 square feet. This alternative, the Lesser Variance Alternative with Bulk Waivers, achieves a rectilinear footprint but does not comply with a number of bulk regulations. Even with requested waivers, the portion of the site that can be developed with a residential building is relatively limited and has a rentable-to-gross efficiency ratio of only 40.0% for the ground floor with the studio unit and 70.8% for the upper floors with the two-bedroom units. As summarized in Schedule A of the Financial Report, the Lesser Variance scenario has a total project development cost of \$17,635,000 while the projected income stream from the residential building and the existing theater only yields a capitalized value of \$15,154,000. The Lesser Variance scenario yields significantly less value (\$2,481,000) than the project development cost and therefore is not economically feasible.

As described in detail in an earlier section, the Proposed Project is depicted in Drawings A.401 through A.410. The enlarged footprint permits a reconfiguration of the ground floor to provide a major interior waiting space, more efficient circulation and a larger concession stand as well as an increase in the number of theaters from 5 to 11. As summarized in Schedule A of the Financial Report, the Proposed Project has a total project development cost of \$23,696,000 and a capitalized value of \$23,929,000 and is the only alternative that yields a positive net capitalized value and is economically feasible.

- C. The variance, if granted, would not alter the essential character of the neighborhood or district in which the Subject Premises is located, would not impair the appropriate use and development of adjacent property, and would not be detrimental to the public welfare.**

As documented in the Land Use and the Urban Design and Visual Resources sections of the Environmental Assessment Statement (the “EAS”) submitted as part of this Application, Cornelia Street is primarily characterized by residential and mixed residential and commercial uses. Immediately adjacent to the Subject Premises on its east side is 12 Cornelia Street, a five-story mixed residential and commercial through-lot building which houses Krystyna’s Place, a boutique vintage store at the street level. East of 12 Cornelia Street is another through lot, 331 Avenue of the Americas, with a one-story commercial office building. Two Cornelia Street, the corner lot at the Avenue of the Americas and Cornelia Street, is a 12-story flatiron-style mixed residential and commercial building that houses Papaya Dog, a 24-hour fast food chain on the ground floor, and other commercial uses on the Avenue of the Americas frontage. Adjacent to the Subject Premises on its west side site are mixed residential and commercial buildings at 18-20 Cornelia Street with three restaurants on the ground floor. Twenty-Two to Twenty-Six Cornelia Street are five-story residential multi-family walk up buildings. Twenty-Eight Cornelia Street, a four-story mixed use residential and commercial building, houses the restaurant Palma in the ground floor and 30 Cornelia Street, a five-story mixed use residential and commercial building, has a restaurant and a laundromat on the ground floor. Thirty-Two Cornelia Street is a four-story residential multi-family walk up, and the corner lot (225 Bleecker Street) contains a one-story commercial building that is being renovated.

To the north of the project block, the northern corner lot at Cornelia Street and Bleecker Street contains a four-story mixed commercial and residential building (257 Bleecker Street) housing a bakery on the ground floor. Immediately to the east of 257 Bleecker Street is a three-story residential building at 35 Cornelia Street. A commercial and office building is located at 33 Cornelia Street but does not currently appear to house a tenant on the ground floor. Thirty-One Cornelia Street, a four-story mixed use residential and commercial building, houses a restaurant on the ground floor. Twenty-Nine Cornelia Street, a six-story mixed use residential and commercial building, houses the Cornelia Street Café on the ground floor. Twenty-Five Cornelia Street through 13 Cornelia Street, comprising seven buildings on the north side of Cornelia Street across the street from the Subject Premises ranging in height from three to six stories, are all residential buildings. Eleven Cornelia Street, also known as The Seville at Cornelia Street, is a five-story mixed residential and commercial building which houses an event planning company but does not have ground floor retail. Seven to Nine Cornelia Street, a five-story mixed use residential and commercial building, houses two restaurants on the ground floor. Five Cornelia Street and the corner building at West 4th Street are both five-story mixed residential and commercial buildings.

The proposed 60-foot high street wall of the addition would match the flanking buildings on either side and provide a continuous street wall condition that is more consistent with the prevailing building form and street wall character of Cornelia Street than the existing vacant lot. The fretted glass and zinc panels and masonry ground floor would substantially improve the pedestrian experience as compared to the painted wall and access gate that encloses the existing vacant lot and would reinforce the mixed use character of Cornelia Street.

In approving a Certificate of Appropriateness (COFA 17-9060, issued 11/18/15), the Landmarks Preservation Commission found:

“that the proposed building will fill a gap which currently disrupts the continuity of the street wall; that the height of the proposed building is in keeping with the heights of the existing buildings on this street; that the red brick, glass, and metal façade will relate well to the materials found on buildings on the street and in the historic district; that the tripartite division of the façade is harmonious with other buildings on this street; that the irregular plane of the façade created by the slight tilting of the brick panels that comprise it, recalls the depth and articulation of the adjacent facades with their fire escapes; that the shadow lines created by layering the brick panels over glass panels, evokes a modern interpretation of the deep set punched window openings set into the facades of the brick tenements; that the recessed entrances, stone bulkhead, and continuous horizontal band at the top of the ground floor, refer to typical storefront elements seen on the existing buildings in the streetscape with commercial ground floors; that the alternating zinc and fritted glass panels at the ground floor help to establish a relationship to the street and to the storefronts of neighboring buildings without emulating them; that the black painted metal cornice is a simplified version of the more ornate crowning element found on the tenements; and that in terms of overall scale, design, details, proportions, and materials, the proposed building is supportive of the special architectural and historic character of the streetscape and the Greenwich Village Extension II Historic District.”

The massing, materials and design of the enlargement have been carefully selected to reinforce the mixed use character of the Cornelia Street streetscape. The fritted glass panels will provide a visual connectivity between the interior waiting area and sidewalk and further enhance the pedestrian experience. Patrons will continue to enter and exit the theater from the Avenue of the Americas (with only emergency egress onto Cornelia Street). The proposed reconfiguration of the entry/exit sequence and the provision of the new interior waiting areas are designed to eliminate the lines of patrons queuing on the sidewalk.

The foregoing demonstrates that the requested variance will not alter the essential character of the neighborhood, impair the use and development of adjacent property or be detrimental to the public welfare.

D. The practical difficulties and unnecessary hardship have not been created by the owner or its predecessor in title.

The practical difficulties and unnecessary hardship have not been created by the owner or its predecessor in title but rather arise from several factors related to the existing built condition of the zoning lot, the history of development of the Subject Premises and the regulatory controls imposed on the split lot zoning designation.

Although constructed over 160 years ago as a church, the interior of the building has been altered a number of times since it first operated as a movie theater in 1938. To our knowledge, the envelope of the building has not been enlarged and all interior alterations have been in compliance with then-applicable laws and code requirements. The vacant lot on Cornelia Street has always been used by the theater for emergency egress and accessory uses. As explained in the Owner's Letter (Exhibit A), the inherently inefficient arrangement and layout of the existing theaters impose significant operational premiums, reduce potential theater issues and provide a less than ideal patron experience. The enlargement of the existing building as detailed in the Proposed Project will address a number of the physical constraints of the existing building.

The practical difficulties that necessitate the requested zoning waivers have not been created by the current owner or predecessor in title, but rather are due to a combination of physical, historical and regulatory conditions.

E. Within the intent and purposes of the Zoning Resolution, the variance, if granted, is the minimum variance necessary to afford relief.

The requested zoning waivers are the minimum necessary to permit an enlargement that will address a number of the physical and operational constraints of the existing building.

As discussed in an earlier section, the Lesser Variance Alternative with Bulk Waivers analyzes a five-story (plus cellar) residential building that builds out the Cornelia Street frontage and provides the required emergency egress for the existing theater through a passageway on the ground floor of the residential building. Although this development scenario eliminates the use waiver, it requires a number of bulk waivers including: the rear yard equivalent; the required minimum distance between buildings on a zoning lot; the regulations governing the distribution of floor area on split lots; and the lot coverage and maximum base height before setback of the Quality Housing Option regulations. Even with waivers of these bulk regulations, this development scenario still would not generate sufficient income to cover the construction and operating costs and is not economically feasible. The Proposed Project is the only feasible scenario that would provide a reasonable return on investment.

In conclusion, the requested variance is the minimum necessary to afford relief.

Respectfully submitted,
Kramer Levin Naftalis & Frankel LLP

by: 

Paul D. Selver

Dated: March 11, 2016

EXHIBIT A

February 23, 2016

Margery H. Perlmutter, Chair
New York City Board of
Standards and Appeals
250 Broadway, 29th Floor
New York, New York 10007

Re: IFC Center
323-327 Avenue of the Americas
New York, New York
Block 589; Lots 19, 30 and 31

Dear Madam Chair:

As a supplement to the Statement of Facts and Findings submitted with the application, this letter provides additional background information on the IFC Center, the proposed enlargement and its operations.

Since its opening in 2005, the IFC Center has earned a reputation as one of the preeminent art-house theaters in the country, originating the runs of such films as last year's leading fiction and non-fiction films, *BOYHOOD* and *CITIZENFOUR*, with more patrons seeing those films at IFC Center than at any other theater in the country. In spite of our small size (we have a fraction of the seats of the Angelika or the Sunshine, downtown theaters that play specialized films and are both part of national exhibition chains), we have set the course for dozens upon dozens of critically important documentaries, foreign films and independent American features, helping many NYC filmmakers reach audiences that they never would have been able to reach otherwise. In 2010, IFC Center launched DOC NYC, which quickly became the nation's largest and most vital documentary film festival. DOC NYC celebrates the state of the art in non-fiction storytelling in cinema, and recognizes New York City's central role in helping artists tell true stories on screen.

Some of our superlatives:

- IFC Center, following in the footsteps of the Waverly Cinema, which opened in 1937, is the oldest continually operating cinema in Manhattan.

- IFC Center has presented more documentary feature films, in special event screenings, in festival screenings, and in multi-week long theatrical engagements, than any other theater in the USA.
- Thanks to the IFC Center, downtown New York now has, for the first time, annual presentations of the Human Rights Watch Film Festival, as well as the leading and largest documentary film festival in the United States, DOC NYC.
- IFC Center presents more talk-backs, Q&A's and filmmaker in-person screenings than any other cinema in the U.S.
- IFC Center is the only cinema in the United States that is committed to short films. Inspired by the programming history of the Waverly (newsreel, short subject, "B" feature, "A" feature), IFC Center has, since its first day, featured rotating series of short films playing before every regular feature, providing filmmakers of literally hundreds of short films with theatrical exposure that simply does not otherwise exist in American cinemas of the 21st century. Instead of the commercials for cars and soda and video games that other NYC theaters foist on their audiences, IFC Center patrons get an extra (short) film with every ticket.
- With nearly \$700,000 in ticket sales, Werner Herzog's 3D documentary on prehistoric cave paintings, CAVE OF FORGOTTEN DREAMS, generated more box office from one screen at IFC Center than any other film generated on a single screen at any movie theater in America in the past decade.

IFC Center gained international attention for pushing back against the MPAA and the Hollywood establishment, which imposed overly restrictive ratings on such acclaimed films as *BLUE IS THE WARMEST COLOR*, *BOYHOOD* and *CITIZENFOUR*, by allowing responsible teens to see these outstanding works of cinema. IFC Center is committed to supporting and developing film appreciation among teenagers and young adults and, to that end, has just launched **FILM SCHOOL AT IFC CENTER**:

1. Educational outreach program offers free, year round IFC Center membership benefits to teachers and high school students.
2. Free admission for school groups to our most beloved annual program, the Oscar-Nominated Short Films.
3. Free admission to our regular Weekend Classics series, showcasing the great works of cinema, for high school students, with free popcorn.

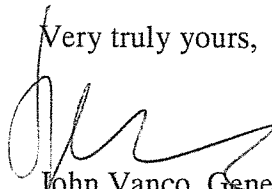
Already, we've had nearly 100 NYC teachers sign up for the gratis membership, which can be renewed as long as they teach. Hundreds and hundreds of students have come in the past month to enjoy free admission to the Oscar-Nominated Short Films. We look forward to building on these early successes and expanding our educational offerings to spread the magic of cinema to the next generation.

After ten years of presenting terrific art films to appreciative audiences, we've realized how much the West Village appreciates an independent-minded neighborhood theater that plays documentaries, foreign films, short films and repertory programs. In addition, there is a latent demand from independent filmmakers and producers for additional venues with a range of theater capacities at which to present their works.

Our challenge has been to try to accommodate this demand within the very real constraints imposed by our 160-year-old building. Since the waiting area within the building is so tight, we try to plan our operations so that we minimize the time our patrons have to wait prior to entering the auditorium. We currently have to stagger show times to ensure that our box office doesn't become overwhelmed or the concessions line becomes so long as to discourage patrons from purchasing a snack. The inherently inefficient arrangement and layout of the existing theaters impose significant operational premiums and provide a less than ideal patron experience.

The proposed enlargement addresses all of these issues and will allow us to more effectively compete with the larger Manhattan theaters that screen independent films – the Sunshine (855 seats), the Angelika (1,167 seats) and the Lincoln Plaza Cinemas (1,047 seats). It expands the number of theaters from 5 to 11 to allow us to show and properly schedule more films; it broadens the mix of theater sizes that will allow us to screen a wider variety of programs; and it provides a central waiting lobby and improved interior circulation. Together, these improvements will both reduce sidewalk congestion by eliminating queues on the sidewalk and provide an experience that more closely meets the expectations of today's theatergoers.

Very truly yours,



John Vanco, General Manager
IFC Center