Zoning Resolution

THE CITY OF NEW YORK
Zohran K. Mamdani, Mayor

CITY PLANNING COMMISSION
Sideya Sherman, Chair

93-732 - Certification for public access areas on the Ninth Avenue Rail Yard

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LAST AMENDED
4/29/2014

No certification for the phased development of public access areas on the Ninth Avenue Rail Yard shall be permitted until a plan has been submitted that provides for the completion of public access areas in accordance with the provisions of this Section. Such plan shall provide, at a minimum, that the entry plaza, required pursuant to paragraph (a) of Section 93-73 (Public Access Areas on the Ninth Avenue Rail Yard) will be provided in connection with the construction of a #building# located on the northeast corner of the Ninth Avenue Rail Yard, that the art plaza, required pursuant to paragraph (c) of Section 93-73, will be provided in connection with the construction of a #building# located on the southeast corner of the Ninth Avenue Rail Yard and that in connection with the construction of a #building# on the southwest corner of the Ninth Avenue Rail Yard, the West 31st Street connector required by paragraph (e) of Section 93-73, and a 20-foot wide paved area along the eastern edge of Dyer Avenue and extending for the north-south dimension of such #building# will be provided.

An application for certification under this Section shall be filed with the Chairperson of the City Planning Commission and such application shall include a site plan indicating the area and dimensions of the public access area, or portions thereof, and a detailed plan or plans demonstrating compliance with the requirements of Section 93-73.

Plans for the public access areas shall be set forth in an instrument in a form acceptable to the City, including such provisions as are necessary to ensure compliance with the provisions of this Section. Such instrument shall be filed and duly recorded in the Office of the City Register of the City of New York for New York County and indexed against the property. Such filing and recording of the instrument shall be a precondition for the Chairperson's certification to the Department of Buildings under this Section. The recording information shall be included on the certificate of occupancy for

any #building#, or portion thereof, on the #zoning lot# issued after the recording date.

No temporary certificate of occupancy from the Department of Buildings may be issued for any portion of a #development# within a phase until the Chairperson of the City Planning Commission certifies to the Department of Buildings that the public access area, or portions thereof associated with such phase, is substantially complete and that such public access area, or portions thereof, are open to and useable by the public. No permanent certificate of occupancy from the Department of Buildings may be issued for any portion of such #development# until the Chairperson certifies to the Department of Buildings that the public access areas, or portions thereof, are fully complete, and that all requirements of this Section have been met in accordance with the plans for public access area, or portions thereof associated with such phase.

No temporary certificate of occupancy from the Department of Buildings may be issued for a #building#, or portion thereof, where the total amount of #floor area# that has been #developed# or #enlarged# on the Ninth Avenue Rail Yard exceeds 3,204,000 square feet until the Chairperson of the City Planning Commission certifies to the Commissioner of Buildings that the public access areas at 450 West 33rd Street required by paragraphs (c) and (d) of Section 93-72 and that all public access areas on the Ninth Avenue Rail Yard required by Section 93-73 have been substantially completed and are open and usable by the public. Notwithstanding the foregoing, the Chairperson may, with respect to the public access area required by paragraph (c) and the elevator required by paragraph (d) of Section 93-72 at 450 West 33rd Street, certify to the Commissioner of Buildings that such temporary certificate of occupancy may be issued absent their substantial completion provided that:

(a) the owner of 450 West 33rd Street has submitted proof that all or portions of the area of the West 31st Street passageway required by paragraph (c) of Section 93-72 was at any time subject to a lease with an expiration date of December 31, 2019, and was not able to obtain control of the areas subject to such lease on or before December 31, 2017;

(b) a letter of credit has been posted in accordance with City requirements, and such letter of credit:

(1) is in an amount equal to 200 percent of the estimated cost to construct the public access area and the elevator at 450 West 33rd Street, required by paragraphs (c) and (d) of Section 93-72, respectively, as set forth in a cost estimate prepared by a professional engineer. Such cost estimate shall be based upon construction documents prepared by a registered architect and submitted with the application for certification pursuant to this Section, and shall be subject to review and acceptance by the City; and

(2) authorizes the City to draw upon the letter of credit if such public access area and elevator have not been substantially completed and are not open and usable by the public by December 31, 2022;

(c) that an easement agreement has been recorded granting the City access to 450 West 33rd Street and the Ninth Avenue Rail Yard, as may be necessary for purposes of constructing the public access area and elevator required by paragraphs (c) and (d) of Section 93-72, respectively, if they are not completed by the owner by December 31, 2022; and

(d) in addition to the foregoing, such letter of credit shall be maintained from the date of certification for temporary certificates of occupancy, pursuant to this Section, until the Chairperson of the City Planning Commission certifies to the Commissioner of Buildings that the public access area required by paragraph (c) and the elevator required by paragraph (d) of Section 93-72 have been substantially completed and are open and usable by the public, or until same have been substantially completed by the City. The Chairperson may, no more frequently than annually, require the submission of an updated or new letter of credit in an amount that reflects changes in costs over time, and such updated or new letter of credit shall be subject to the requirements and procedures of paragraph (b) of this Section, until such letter of credit is released based upon substantial completion.

Notwithstanding the foregoing, in the event that a temporary public access area plan is approved pursuant to Section 93-734 (Certification to temporarily modify public access areas for construction staging), no temporary certificate of occupancy from the Department of Buildings may be issued for any portion of a #development# until the Chairperson certifies to the Department of Buildings that the public access area, or portions thereof associated with a phase of #development#, is substantially complete and in accordance with such temporary public access area plan, and the public access area, or portions thereof, are open and useable by the public. No permanent certificate of occupancy from the Department of Buildings may be issued for any portion of such #development# until the Chairperson certifies to the Department of Buildings that the public access area, or portions thereof associated with such phase, has been fully completed in accordance with the plan therefor, and that such public access area, or portions thereof, are open and useable by the public.