

**1092-79-BZ**

APPLICANT – Greenberg Traurig, LLP, for Charlton Cooperative Corp., owner.

SUBJECT – Application November 18, 2015 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. M1-6(HDA) zoning district.

PREMISES AFFECTED – 112 Charlton Street aka 547 Greenwich Street, south side of Charlton Street, Block 597, Lot 45, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to reopen and amend the variance granted by the Board which permitted the conversion of all floors above the first floor of an existing six-story building known as and located at 112 Charlton Street, in Manhattan, within an M1-6 zoning district and the Special Hudson Square District, from lofts into a multiple dwelling; and

WHEREAS, the purpose of this application is to facilitate the transfer of unused development rights appurtenant to the subject site (Block 597, Lot 45) by the owner of the site to the owner of an adjacent development site (tentatively comprised of Block 597, Lots 39 and 46, the “Development Site,”); and

WHEREAS, a public hearing was held on this application on March 8, 2016, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice Chair Hinkson, Commissioner Ottley-Brown and Commissioner Chanda performed inspections of the subject site and surrounding neighborhood; and

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

WHEREAS, the application is brought on behalf of Charlton Cooperative Corp., which owns the subject site and seeks the Board’s authorization to merge the subject site with the Development Site; and

WHEREAS, the subject site is a corner lot located on the south east corner of Charlton Street and Greenwich Street, within an M1-6 zoning district and the Special Hudson Square District, in Manhattan;

WHEREAS, the subject site has approximately 75 feet of frontage along Charlton Street, 50 feet of frontage along Greenwich Street, 3,750 sq. ft. total lot area and is improved with a six-story building with 22,593 sq. ft. total floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 10, 1980 when, under the

subject calendar number, the Board granted a variance to permit the conversion of all floors above the first floor of the existing building from a manufacturing to a residential use (the “Variance”); and

WHEREAS, on April 10, 2007, under BSA Calendar Number 260-06-BZ, the Board granted a special permit to allow a physical culture establishment (PCE) in 1,725 sq. ft. of floor area on a portion of the first floor of the subject building, for a period of 10 years, expiring April 10, 2017; and

WHEREAS, the Board notes that the Variance involved the change of use of certain floors within the subject building with no impact on bulk; and

WHEREAS, the applicant represents that no changes to the subject building are associated with the proposed merger of the zoning lots and development rights transfer; and

WHEREAS, in addition, the applicant contends that the proposed transfer of development rights is consistent with the New York Court of Appeals’ decision in *Bella Vista v. Bennett*, 89 N.Y. 2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been granted; and

WHEREAS, the applicant asserts that the transfer of the unused development rights from the subject site is not in conflict with the Variance; and

WHEREAS, the applicant notes that the Board made all of the findings required pursuant to ZR § 72-21 in the Resolution for the Variance (the “Resolution”), but that the Resolution does not indicate whether the Board assigned any value to the unused development rights and the case file containing materials submitted to and reviewed by the Board at that time is unavailable; and

WHEREAS, accordingly, the applicant assumes that the Board did not assign any value to the unused development rights and, in support of that assumption, submits a financial analysis concluding that, based on poor market conditions at the time, that the unused development rights were limited to manufacturing and commercial use and that the immediately adjacent and/or secondarily adjacent properties were both underbuilt and under separate ownership, there were no viable opportunities transfer the development rights or use the development rights to enlarge the subject building; and

WHEREAS, specifically, the analysis relays that at the time of the Variance, manufacturing and/or commercial real estate development was virtually non-existent across New York City in general, including in the area surrounding the subject premises; and

WHEREAS, thus, the applicant states that an amendment to the Variance to facilitate the transfer of the unused development rights from the subject site to the Development Site does not undermine the integrity of the Board’s earlier findings concerning ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are

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readily distinguishable from those underlying the Court’s holding in *Bella Vista*; and

WHEREAS, specifically, the applicant contends that, at the time of the Variance, the subject premises were held in separate and unrelated ownership from other parcels on the subject block and that 35 years have elapsed since the Variance, during which time the value of unused development rights has increased in substantial and unforeseeable ways; and

WHEREAS, the applicant concludes that the use of the development rights as a result of the intended merger is therefore not inconsistent with the Variance; and

WHEREAS, the Board notes that *Bella Vista* concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights—from a site in which the Board granted a use variance to permit the operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership—for development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, *inter alia*, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board credits the applicant’s assertions that, unlike in *Bella Vista*, the subject site and the Development Site have been under separate, unrelated ownership since the Board’s grant of the Variance and that, therefore, the applicant lacked control over the timing and nature of the development of the Development Site; and

WHEREAS, the Board also notes that a brief period of time elapsed between the issuance of the variance underlying the *Bella Vista* decision and the date of the permit application in which the owner proposed to use floor area transferred from the variance site, further distinguishing that case from the instant application; and

WHEREAS, the Board acknowledges that in *Bella Vista*, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, which the subject Variance was issued 35 years ago, in 1980; and

WHEREAS, the Board agrees that the differences in timing and in the health of the respective real estate markets distinguish the *Bella Vista* case from the instance case and supports the conclusion that the use of the subject site’s unused development rights was not foreseeable by

**A true copy of resolution adopted by the Board of Standards and Appeals, March 8, 2016.**

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**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

the owner of the Development Site or the Board; and

WHEREAS, the Board finds that the proposed transfer of development rights does not implicate or affect the basis for its findings in general, and specifically the (b) and (e) findings, at the time that they were made; and

WHEREAS, the Board observes that this finding is based on both of infeasibility of assemblage at the time of the Variance and on the changing real estate market conditions in the neighborhood surrounding the subject site; and

WHEREAS, based upon its review of the record, the Board does not object to the transfer of unused development rights from the subject site or the proposed zoning lot merger, but notes that any further changes to the subject site that are inconsistent with prior approvals as subject to the Board’s review and approval.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, having been adopted on June 10, 1980, so that as amended this portion of the resolution shall read: “to permit the merger of the subject site with contiguous parcels on Block 597, in Manhattan, and the associated modifications to the BSA-approved site plan; and *on condition*:

THAT the zoning calculations, including any transfer of development rights, shall be subject to DOB’s review and approval and shall be in full compliance with underlying bulk regulations;

THAT the site shall remain subject to the Board’s jurisdiction, including modifications to the buildings on the site;

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT DOB shall 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 8, 2016.

