

**96-14-BZ**

**CEQR #14-BSA-148M**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, by Paul Selver, Esq., for 290 Dyckman Properties, LLC, owner.

SUBJECT – Application May 5, 2014 – Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district PREMISES AFFECTED – 290 Dyckman Street, corner lot at the intersection of Dyckman Street and Henshaw Street. Block 2246, Lot 28. Borough of Manhattan.

**COMMUNITY BOARD #12M**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 30, 2014, acting on DOB Application No. 121333217, reads, in pertinent part:

1. Warehouse use (UG 16D) is not permitted in the R7-2 portion of the zoning lot, contrary to ZR 22-10;
2. The vertical clearance of the existing loading berth is less than the 14-foot required height, contrary to ZR 36-681;
3. The expansion of the curb cut access to the existing loading berth is less than 50 feet from the intersection of two street lines, contrary to ZR 36-682; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C8-3 zoning district and partially within an R7-2 zoning district, the operation of a self-storage facility (Use Group 16) within an existing two-story building, contrary to ZR §§ 22-10 (use), 36-681 (height of loading berth), and 36-682 (location of curb cut); and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in *The City Record*, with continued hearings on October 28, 2014, and November 18, 2014, and then to decision on December 9, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of Dyckman Street and Henshaw Street, partially within a C8-3 zoning district and partially within an R7-2 zoning district; and

WHEREAS, the applicant represents that 58 percent of the lot area is within the C8-3 portion of the site and 42 percent of the lot area is within the R7-2 portion of the site; and

WHEREAS, the site has 100 feet of frontage along Dyckman Street, 169.3 feet of frontage along Henshaw Street, and 17,287 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story building that was constructed as a stable approximately 100 years ago; and

WHEREAS, the Board has exercised jurisdiction over the site since 1939, when, under BSA Cal. No. 171-39-A, it granted a building code appeal authorizing the conversion of the entire non-fireproof building to a parking garage; the applicant states that in 1944, the building was converted to a carpet cleaning factory; the building remained a carpet cleaning factory until 1983, when it became a wholesale bakery; and

WHEREAS, the applicant states that an application to legalize the bakery was filed with the Board under BSA Cal. No. 107-95-BZ and granted on March 7, 2000, for a term of five years, to expire on March 7, 2005; and

WHEREAS, the applicant now seeks to convert the building to a self-storage facility with 34,529 sq. ft. of floor area (3.4 FAR) and approximately 760 storage units of varying sizes; the proposed facility is a permitted use within the C8-3 portion of the lot but not within the R7-2 portion of the lot; thus, a use variance is requested; and

WHEREAS, in addition, the applicant states that the facility is required to provide one off-street loading berth in accordance with ZR § 36-62 and that such berth must comply with the minimum dimensional requirements of ZR § 36-681; and

WHEREAS, the applicant represents that the existing building has a loading berth that meets the minimum length (50'-0”) and width (12'-0”) for a loading berth for a Use Group 16 facility with 10,000 sq. ft. of floor area or more; however, the height of the berth, which 12’-6”, is 1’-6” less than minimum height set forth in ZR § 36-681 (14’-0”); accordingly, the applicant seeks a waiver of ZR § 36-681; and

WHEREAS, finally, the applicant states that access to the building from the street must be modified in order to accommodate the proposed use; currently, the site has three existing curb cuts (two along Dyckman Street and one along Henshaw Street); the proposal reflects the elimination of the Henshaw Street curb cut and one Dyckman Street curb cut, and the expansion of the other Dyckman Street curb cut from its current width of 14’-0” to a width of 25’-0”; and

WHEREAS, the applicant states that the curb cut to be modified is located 13’-0” from the intersection of Henshaw Street and Dyckman Street; as such, the curb cut does not comply ZR § 36-682, which prohibits a curb cut with a loading berth within 50’-0” of the intersection of two streets; therefore, in addition to the use waiver and the waiver regarding the height of the loading berth, the applicant seeks a waiver to maintain and expand its curb cut contrary to ZR § 36-682; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the history of development of the site is a unique physical condition, which creates practical difficulties and unnecessary hardships in developing the site in conformance and compliance with underlying district regulations; and

**96-14-BZ**  
**CEQR #14-BSA-148M**

WHEREAS, the applicant contends that due to the history of development of the site, neither the building nor the site itself is suitable for conforming uses; and

WHEREAS, the applicant states, as noted above, that the building was constructed approximately 100 years ago (when the site was within an “unrestricted” zone under the 1916 Zoning Resolution) and that it has been occupied at various times as a stable, a factory, and a wholesale bakery; and

WHEREAS, the applicant states that in 2000 (BSA Cal. No. 107-95-BZ), the Board recognized the unsuitability of the building for conforming uses when it granted a variance to legalize a wholesale bakery that had been in operation since the mid-1980s; in the resolution, the Board observed that the building was “not readily convertible to a conforming use”; and

WHEREAS, the applicant states that in order to accommodate a conforming use, at a minimum, the building would require new elevators and egress stairs, upgraded fire and life-safety systems, and the construction of one or more lobbies (depending on whether one or multiple tenants would be occupying the building); and

WHEREAS, the applicant also contends that the conforming use options for the site are further constrained by the limited number of uses that are permitted in both a C8-3 zoning district and an R7-2 zoning district – namely, those within Use Group 4; thus, development of the site would be economically challenging even if the site were not occupied by an existing building; and

WHEREAS, the applicant asserts that the history of development of the site—its existing conditions—also create practical difficulties complying with the loading berth and curb cut provisions applicable to the proposed self-storage facility; and

WHEREAS, as to the loading berth, the applicant states that the building’s existing loading berth cannot be enlarged to provide a height in accordance with ZR § 36-681 without significant structural modifications to the floor of the second story, at significant cost; and

WHEREAS, as to the existing (albeit expanded) curb cut contrary to ZR § 36-682, the applicant states that its location is dictated by the location of the loading berth and that it cannot be relocated without a corresponding relocation of the loading berth, at significant cost; further, the applicant contends that while the curb cut is being widened, the curb cut’s degree of non-compliance with respect to the intersection—its distance from the intersection of 13’-0”, where 50’-0” is required—is unchanged; and

WHEREAS, the Board agrees that the history of development of the site creates practical difficulties and unnecessary hardships in developing the site in conformance and compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance and compliance

with the Zoning Resolution will realize a reasonable return; and

WHEREAS, the applicant provided a financial analysis for: (1) an as-of-right conversion to community facility (Use Group 4); and (2) the proposal; and

WHEREAS, the study concluded that only the proposal would provide a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to revise its financial analysis of the self-storage facility to better reflect the valuation of the proposed use; and

WHEREAS, in response, the applicant revised its analysis as directed; and

WHEREAS, based upon its review of the applicant’s submissions, the Board has determined that because of the site’s unique physical conditions, there is no reasonable possibility that development in strict conformance and compliance 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that along both Riverside Drive and Henshaw Street, the area is characterized by a predominance of residential buildings, many of which have ground floor retail; in contrast Dyckman Street is mostly occupied by a mix of automotive, industrial, and manufacturing uses; and

WHEREAS, the applicant contends that, in addition to being a conforming use in a portion of the site, the proposed self-storage facility is consistent with nearby uses; self-storage is predominantly used by residents to store household items, furniture, clothing, recreational gear, etc., that are used seasonally or infrequently, or are simply too large to fit into an urban living environment; thus, while the facility is not permitted as-of-right in a portion of the site or in the nearby residence districts, it is a complimentary use that will be an amenity for the community; and

WHEREAS, turning to bulk, the applicant states that no significant changes to the bulk of the building are proposed and that its massing will be the same as it has been for the past 100 years; and

WHEREAS, as to the size of the loading berth and the location of the curb cut, the applicant notes that these non-compliances are historic conditions, which have existed for several decades in connection with manufacturing and commercial uses; and

WHEREAS, turning to traffic, the applicant states that its reconfiguration of the building access—the removal of two curb cuts and expansion of one—will mitigate the impact of the facility on traffic; and

WHEREAS, the applicant states that patrons will access the facility from Dyckman Street, just west of Henshaw Street and that this configuration will orient pedestrian and vehicular traffic away from Henshaw Street and Riverside Drive and reduce the volume of non-residential traffic along those streets; and

**96-14-BZ  
CEQR #14-BSA-148M**

WHEREAS, at hearing, the Board questioned whether the proposed loading area would have sufficient capacity to accommodate vehicular loading demand during peak periods; and

WHEREAS, in response, the applicant's traffic consultant analyzed the anticipated use of the facility (based on data from other self-storage facilities) and determined that: (1) two-thirds of the trips to the facility would be made using modes of transportation (public transportation, walking, taxi) that would not occupy the loading area; (2) even during peak periods it projects no more than four vehicles utilizing the facility per hour; (3) the loading area accommodates up to three cars or vans when a truck or storage taxi is not present and one to two cars or vans when a truck or storage taxi is present; and (4) street parking along Dyckman Street is available to accommodate additional vehicles during peak periods; and

WHEREAS, based upon the above, 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; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that no changes to the bulk of the building are proposed; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford 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 Unlisted 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. 14-BSA-148M dated April 30, 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, 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.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative 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, to permit, on a site partially within a C8-3 zoning district and partially within an R7-2 zoning district, the operation of a self-storage facility (Use Group 16) within an existing two-story building, contrary to ZR §§ 22-10 (use), 36-681 (height of loading berth), and 36-682 (location of curb cut), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 6, 2014"-(6) sheets; and *on further condition*:

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by December 9, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 9, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, December 9, 2014.**

**Printed in Bulletin Nos. 49-50, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

