

294-13-BZ

CEQR #14-BSA-062M

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial (UG6), contrary to use regulations (§43-17, 42-141). M1-5B zoning district. PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated September 3, 2013, acting on DOB Application No. 121688263, reads, in pertinent part:

Proposed conversion of non-residential building is not permitted as defined in ZR 43-17 and it requires BSA approval; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district, the conversion of the second and third floor of an existing three-story building and the addition of a fourth and partial fifth floor for residential use (Use Group 2), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with continued hearings on June 24, 2014, July 29, 2014, and August 19, 2014, and then to decision on September 16, 2014; and

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

WHEREAS, Community Board 2, Manhattan, stated that it did not object to the application on the condition that there not be an eating or drinking establishment at the site; and

WHEREAS, the subject site is located on the west side of Lafayette Street between Spring Street and Broome Street, within an M1-5B zoning district; and

WHEREAS, the site has 25 feet of frontage along Lafayette Street, a lot depth of 75 feet, and 1,875 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story building with 4,875 sq. ft. of floor area and 2.6 FAR; and

WHEREAS, the first floor and cellar are currently

occupied by a retail store and the second and third floors are vacant; and

WHEREAS, Use Group 6 is not permitted below the floor level of the second story within the subject M1-5B zoning district; and

WHEREAS, although the applicant asserts that the retail use is a lawful pre-existing nonconforming use, the applicant initially sought approval for Use Group 6 use on the first floor as part of the variance; and

WHEREAS, however, during the Board’s review process, the applicant withdrew its request for a waiver to allow Use Group 6 use on the first floor, leaving only the request for residential use on the second, third, and new fourth and partial fifth floors with Use Group 2 residential use; and

WHEREAS, the Board does not take any position on the legality of the first floor and cellar use and, in light of the applicant’s withdrawal of the request to allow Use Group 6 use, the Board does not grant waiver for such use; and

WHEREAS, the applicant states that the proposed enlarged building will be five stories with 6,278 sq. ft. of floor area (3.35 FAR) and the second through fifth floors will be occupied as a single-family residence with a floor area of 4,403 sq. ft.; and

WHEREAS, the applicant proposes for the third and fourth floors to remain at the current depth of the third floor of approximately 46’-8” (leaving a rear yard of approximately 28’-3”); the fifth floor will be set back approximately 21’-5” from the street wall and 40’-0” from the rear lot line; and

WHEREAS, because Use Group 2 is not permitted within the subject M1-5B zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the shallow lot depth and small floor plate; (2) the underbuilt nature of the existing building; and (3) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the lot size, the applicant notes that the lot has a shallow depth of 75 feet and width of 25 feet; and

WHEREAS, the applicant asserts that such dimensions are insufficient to accommodate conforming manufacturing uses and uniquely small within the area; and

WHEREAS, the applicant states that the surrounding lots and the vast majority of lots in the area all have depths of 100 feet or greater; and

WHEREAS, specifically, the applicant analyzed 86 lots in the immediate area within the M1-5B zoning district and found that, of the 86, only 15 had depths of less than 100 feet and of those, only nine had depths of less than 75 feet; and

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WHEREAS, additionally, the applicant states that there are only nine lots with lot area of 2,000 sq. ft. or less and they are either vacant (one) or not occupied by manufacturing use (eight); and

WHEREAS, further, the applicant states that the eight buildings on small lots all cover almost the entire lot; and

WHEREAS, the applicant represents that none of the nine shallower lots are used for manufacturing uses; and

WHEREAS, the applicant asserts that the remaining lots in the study area all have significantly larger lot areas and are occupied with buildings with greater FAR; only two of the nine undersized lots also have an FAR below 3.0 and shallow depths; and

WHEREAS, as to the existing bulk, the applicant notes that the building is currently constructed to 2.63 FAR but has a potential for 5.0 FAR; the applicant notes that only 13 buildings in the study area are built to 3.0 FAR or lower and of those 13, only three also have a lot depth of less than 100 feet; and

WHEREAS, the applicant concludes that only 3.4 percent of buildings in the surrounding area within the M1-5B zoning district are underbuilt to the same degree (less than 3.0 FAR) and occupy a shallow lot (less than 100 feet); and

WHEREAS, further, the applicant states that none of the 13 buildings that are underbuilt are occupied with manufacturing use but are commercial or mixed-use buildings; and

WHEREAS, the applicant asserts that the existing building is obsolete for a manufacturing use in the following ways: (1) small floor plates, (2) the absence of elevators, (3) the absence of a loading dock, and (4) constrained vehicle circulation and parking conditions which inhibit access to the building; and

WHEREAS, as to the floor plates, the applicant asserts that they are too small to support a manufacturing use in that the first and second floors have a gross floor area based on the lot line dimensions of 1,875 sq. ft. but the functional space in the building from interior wall to interior all is 1,628 sq. ft., with an interior wall width and depth of 22 feet by 74 feet; and

WHEREAS, additionally, the applicant asserts that the absence of a freight elevator, and only a single staircase in the building, create difficulty in the vertical transfer of goods for a conforming use; and

WHEREAS, the applicant asserts that to install an elevator in the building, which is already underbuilt, would only decrease the usable floor area and at significant cost; and

WHEREAS, additionally, the applicant notes that there is not a loading dock and the only access to the building is two pedestrian doors at the street entrance making the transfer of wholesale products and oversized

shipments impossible; and

WHEREAS, finally, the surrounding traffic and parking conditions constrain access to the site, specifically due to being 150 feet from a five-corner intersection and across the street from Petrosino Square, a designated New York City Park; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance 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 with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant considered the following four as-of-right scenarios: (1) as-of-right manufacturing; (2) as-of-right office; (3) as-of-right office expansion; and (4) as-of-right Joint Living Work Quarters for Artists; and (5) the original variance proposal with a floor area of 6,750 sq. ft. and a rear setback of 20'-0" at the third and fourth floors; and

WHEREAS, the applicant notes that among the costs associated with the first three scenarios would be the addition of elevators which would further reduce the constrained floor plates that are already insufficient for conforming use; and

WHEREAS, the applicant concludes that none of the as-of-right alternatives would realize a reasonable rate of return; and

WHEREAS, the applicant also analyzed a lesser variance scenario consisting of the existing building with the second and third floors being converted to residential use and found that a sufficient rate of return could not be realized; and

WHEREAS, the applicant concluded that only the initially proposed five-story mixed-use building with retail on the first floor and a single-family home on the second through fifth floors would realize a reasonable rate of return; and

WHEREAS, however, at the Board's direction, the applicant analyzed the current lesser variance proposal which includes a floor area of 6,278 sq. ft. and a rear setback of 28'-3 1/2" at the third and fourth floors, and concluded that it allows for a reasonable rate of return; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and

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will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant asserts that the surrounding area is characterized by five- to seven-story commercial buildings and lofts occupied by retail uses on the ground floor and residential uses on the upper floors; and

WHEREAS, the applicant submitted an area land use map which reflects that there are only six manufacturing buildings within a 400-ft. radius of the site; and

WHEREAS, the applicant states that adjacent to the site to the north and south are ground floor restaurant uses; the block includes an eleven-story residential building with ground floor retail, built pursuant to a BSA variance, at 204-210 Lafayette Street (see BSA Cal. No. 71-02-BZ); and

WHEREAS, the applicant represents that the building's first floor, which is not a subject of this application, has been used as a commercial use since 1943, as evidenced by a 1943 Certificate of Occupancy and, thus can be established as a non-conforming use; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of one dwelling unit and the continuation of ground floor retail will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant states that the building's proposed street wall of 46 feet, total height of 57 feet, and floor area of 6,278 sq. ft. (3.35 FAR) are compatible with the character of the surrounding area and well within the parameters for conforming use in the subject zoning district, which allows a maximum building height of 85 feet and floor area of 9,375 sq. ft. (5.0 FAR); and

WHEREAS, the Board notes that the applicant originally proposed to extend the rear wall at the third floor and construct the fourth floor directly above it to reduce the existing rear setback above the second floor from 28'-3 1/2" to 20'-0"; and

WHEREAS, at hearing, the Board expressed concern regarding the proposed rear yard depth of 20'-0"; the Board noted that although there are no bulk regulations for residential buildings in manufacturing districts, the Board has historically required a rear yard depth of 30'-0", which is consistent with the requirement in zoning districts where residential use is permitted as-of-right; and

WHEREAS, at the Board's direction, the applicant revised the plans to maintain the existing setback of 28'-3 1/2" at the existing third floor and to provide the same at the new fourth floor; and

WHEREAS, the applicant notes that the full lot coverage of the subject building's first and second floors and setback of 28'-3 1/2" at the third floor are historic conditions and that the adjacent neighbor to the rear of

the site provides an open space of 12 feet to its rear lot line; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's history of development, size and narrowness, and the limited economic potential of conforming uses on the lot; and

WHEREAS, as to the minimum variance, the Board notes that the applicant originally requested a variance for first floor Use Group 6 use and Use Group 2 use on the upper floors, but subsequently withdrew its request for a variance for the first floor; and

WHEREAS, additionally, the applicant initially proposed a rear setback at the third and fourth floors of 20'-0", a partial fifth floor with approximately 500 sq. ft. of floor area; and a total floor area of 6,750 sq. ft.; and

WHEREAS, at the Board's direction, the applicant revised the plans to include a rear setback of 28'-3 1/2" at the third and fourth floors and a reduced partial fifth floor, which now has a floor area of approximately 198 sq. ft. and the proposed total floor area was revised to 6,278 sq. ft.; and

WHEREAS, accordingly, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, 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 an Unlisted action pursuant to 6 NYCRR, Part 617.2; 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-062M, dated October 1, 2013; 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

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impact on the environment; and

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, within an M1-5B zoning district, the conversion of the second and third floor of an existing three-story building and the addition of a fourth and partial fifth floor for residential use (Use Group 2), contrary to ZR § 42-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 2, 2014"- six (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum total floor area of 6,278 sq. ft. (3.35 FAR), a residential floor area of 4,403 sq. ft. (2.35 FAR), one dwelling unit, a maximum street wall height of 46'-0", a maximum building height of 57'-0", and a minimum rear setback of 28'-3 1/2" beginning above the second story;

THAT the Board has not approved Use Group 6 use or any other use which does not conform to the underlying use regulations for the first floor and cellar; thus, the use of the first floor and cellar is subject to DOB review and approval and is not within the scope of the variance;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any 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,

A true copy of resolution adopted by the Board of Standards and Appeals, September 16, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

