

**176-13-BZ**

**CEQR #13-BSA-155M**

APPLICANT – Sheldon Lobel, P.C., for 31 BSP LLC, owner.

SUBJECT – Application June 17, 2013 – Variance (§72-21) to permit Use Group 2 residential in an existing 6-story building with a new penthouse addition, contrary to Section 42-10 of the zoning resolution. M1-5B zoning district.

PREMISES AFFECTED – 31 Bond Street, southern side of Bond Street approximately 1170' from Lafayette Street, Block 529, Lot 25, 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 and Commissioner Montanez.....4  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 15, 2013, acting on DOB Application No. 121331184, reads in pertinent part:

Proposed UG 2 is not permitted; contrary to ZR 42-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5B zoning district, within the NoHo Historic District Extension, the conversion of a vacant, mixed-use, six-story, non-complying building to a seven-story residential building (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in the *City Record*, with subsequent hearings on October 28, 2014, December 9, 2014, and January 30, 2015, and then to decision on April 14, 2015; and

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

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

WHEREAS, the subject site is located on the south side of Bond Street, between Lafayette Street and the Bowery, in the NoHo Historic District Extension, within an M1-5B zoning district, in Manhattan; and

WHEREAS, the site is irregularly shaped and has 25 feet of frontage along Bond Street and a depth of 119 feet, at its eastern boundary, and 114.5 feet, at its western boundary, containing 3,038 square feet of lot area;

WHEREAS, the site is occupied by a six-story and cellar, non-complying, mixed-use building which was constructed in the 19<sup>th</sup> Century and which is a contributing building within the NoHo Historic District; and

WHEREAS, the existing building contains approximately 16,412 sq. ft. of floor area, has an FAR of 5.4, and has a rear yard that varies in depth from 6’-1” to 10’-10.5” at the first story and from 6’-0” to 17’-7.5” at the upper floors; and

WHEREAS, the applicant notes that the building, which has been vacant since May, 2010, was previously occupied by multiple firms which manufactured hats, hat frames and ribbons, dealt in textiles and also for gallery and performing space, recording studios, classrooms and Joint Live Work Quarters for Artists (“JLWQA”); and

WHEREAS, initially, the applicant proposed to utilize the first floor of the building for a Use Group 6 retail use on the first floor (which is not permitted as-of-right below the floor level of the second story in an M1-5B zoning district) and Use Group 2 residential on the second through sixth floors of the building, and to redistribute floor area throughout the building to construct a penthouse addition above the sixth floor of the building; and

WHEREAS, in response to the Board’s concerns, the proposal was modified and the applicant now seeks to use the entire building for Use Group 2 residential use; and

WHEREAS, in addition, the applicant proposes to remove the backshaft at the rear of the building and to redistribute floor area from the rear of the building to construct a seventh story containing a 1,501 sq. ft. penthouse so that the proposed building will have a total floor area of 15,190 sq. ft. (5.0 FAR) and an increase in the depth of the building’s rear yard to approximately 20’-2.625” to 25’- .5” at the first story, 29’-8.125” to 36’-6.625” at the second story, and 29’-8.125” to 36’-6” on the third through seventh stories; and

WHEREAS, the applicant notes that the proposed improvements to the building will include compliance with modern safety requirements, removal of the backshaft at the rear yard of the building and increased mechanical ventilation, which will result in a safer building; and

WHEREAS, because, per ZR § 42-00, Use Group 2 is not permitted within the subject M1-5B zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the narrowness of the subject lot; (2) the irregular, varying, lot depth; (3) the obsolescence of the existing building for a conforming use; and (4) structural constraints; and

WHEREAS, the applicant states that the narrowness of the subject lot (25’-0”), combined with its irregular and varying lot depth of 119’-0” to 124’-0” yields a small, inefficient floor plate which, is not suitable for modern manufacturing or commercial use; and

WHEREAS, the applicant notes that there are 182 lots within a 1,000 foot radius of the site (the “Study

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Area”) that are also within the M1-5B zoning district, only 26 of which have a width of 25’-0” or less; and

WHEREAS, the applicant further notes that of the 26 lots in the Study Area that are 25’-0” in width or narrower, 18 contain residential use; of the eight lots which do not contain residences, seven of which are distinguishable from the subject site in that they all contain either a non-conforming commercial use on the ground floor (retail or eating and drinking establishment) or are located on lots which, because they are shallower than the subject lot, allow for significant light and air and are, therefore, more marketable for conforming commercial uses; and

WHEREAS, the above-noted assertions are supported in a uniqueness study commissioned by the applicant in support of the instant application and reviewed by the Board; and

WHEREAS, the applicant also asserts that the building itself is obsolete for conforming uses; and

WHEREAS, in support of its assertion that the building is obsolete, the applicant notes that the existing building, constructed approximately 120 years ago for manufacturing uses, does not have a loading dock or the space to install a loading dock without relocating the existing stair and elevator core within the building and negatively impacting the historic façade of the building, which, as noted, is a contributing building within the NoHo Historic District; and

WHEREAS, the applicant states that the existing wood joists throughout the subject building are insufficient to support any load in excess of 70 PSF, which precludes manufacturing uses; and

WHEREAS, the Board agrees with the applicant that the site’s narrow width and irregular shape as well as the obsolescence of the existing building for a conforming use, are unique physical conditions, which, in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right office building; (2) an as-of-right hotel; and (3) the proposed residential building; and

WHEREAS, the applicant states that an as-of-right office building with a single elevator and insufficient floor plates would provide a capitalized value of \$5.27 million, which is insufficient to offset development costs estimated to be \$16.79 million, and notes the existence of more marketable spaces within the Study Area which have larger floor plates better suited to modern office build-outs; and

WHEREAS, the applicant states that an as-of-right hotel use, which would require the relocation of the

elevator to the middle of the building and would provide for 20 hotel rooms, would provide a capitalized value of \$4.36 million, which is insufficient to offset development costs estimated to be \$18.56 million; and

WHEREAS, the applicant states that the proposed residential building will provide for a capitalized value of \$22.67 million, which will adequately offset development costs estimated to be \$20.01 million; and

WHEREAS, the above-noted assertions are supported in a financial feasibility study submitted by the applicant in support of the instant application and reviewed by the Board; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject site’s unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use 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 the subject block and surrounding area is increasingly characterized by residential uses, and notes that the LPC’s designation report for the NoHo Historic District Extension recognizes that the neighborhood has become increasingly residential; and

WHEREAS, the applicant further states that the proposed use of the building is consistent with the abundance of JLWQA lofts in the neighborhood, which provide for residential use within the M1-5B zoning district, and notes that uses immediately adjacent to the Premises include a mixed use retail and condominium building and two buildings with JLWQA unit; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) approved of the proposed building by Certificate of Appropriateness No. 16-9063, approved for design only on March 18, 2015; 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 unique physical conditions; and

WHEREAS, finally, 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

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WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13-BSA-155M, dated May 22, 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 within an M1-5B zoning district, within the NoHo Historic District Extension, the conversion of a vacant, mixed-use, six-story, non-complying building to a seven-story residential building (Use Group 2), contrary to ZR § 42-00; *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 April 13, 2015" – fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 15,190 sq. ft. (5.0 FAR), seven stories, three dwelling units, a maximum lot coverage of 81 percent, a maximum building height of 91'-6", and a varying rear yard depth, all as indicated on the BSA-approved plans;

**A true copy of resolution adopted by the Board of Standards and Appeals, April 14, 2015.**  
**Printed in Bulletin Nos. 16-17, Vol. 100.**

**Copies Sent**  
**To Applicant**  
**Fire Com'r.**  
**Borough Com'r.**

THAT the layouts of the dwelling units shall be as reviewed and approved by DOB;

THAT all heating components shall be powered by natural gas and shall comply with applicable New York City laws and regulations with respect to energy and exhaust type, including, without limitation, location of exhaust;

THAT the window/wall construction shall have a sound attenuation rating of 31dBA to ensure a minimum interior noise level of 45 dBA (closed window 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 April 14, 2019;

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 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, April 14, 2015.

