



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

JESSE R. BODINE
District Manager

May 21, 2015

Hon. Margery Perlmutter, Chair
Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: BSA Cal. # 71-15-BZ
Manhattan Block 693 Lot 59 - 548 West 22nd Street

Dear Ms. Perlmutter:

At its regularly scheduled Full Board meeting on May 6, 2015, Manhattan Community Board 4 (CB4), on the recommendation of its Chelsea Land Use Committee, voted 36 in favor, 0 opposed, 1 abstaining and 0 present but not eligible to vote, to recommend approval of the Application for 548 West 22nd Street for variances for use, floor area and height under ZR 42-10, 43-12, 98-22, 98-423(a) and 98-423(b)(3), and to recommend denial of the Application for variances for additional parking under ZR 13-11, 13-12, and 13-13, subject to the condition that the Board of Standards and Appeals (BSA) confirm the applicant's contention that the desired waivers are the minimum necessary to achieve a reasonable financial return.

Background

548 West 22nd Street, Manhattan Block 693 Lot 59, is a 100 foot wide lot on the south side of West 22nd Street, one lot east of Eleventh Avenue. The western portion of the lot, with 50 feet of frontage and 4,970 sq. ft, is located in Subarea D of the Special West Chelsea District (SWCD) and is zoned C6-3. The eastern portion of the lot, with 50 feet of frontage and 4,905 sq. ft., is located in the SWCD's southern manufacturing area and is zoned M1-5. The site is developed with a four story building covering the lot except for a small rear yard approximately five feet in depth in the center of the lot. The building was owned by the Dia Center for the Arts from 1982 until 2007. Since 2007 the ground floor has been rented to galleries and the upper floors have been used as event spaces. Stairwells on either side of the building house an art installation created by Dan Flavin.

Proposed Development

The applicant proposes to renovate the existing four story building and enlarge it to twenty stories. The proposed building would include commercial gallery space on the ground floor,

parking for 15 cars on the second floor, residential amenities on the third floor and residential units on the fourth through twentieth floors. Above the existing fourth floor the new building would set back eight feet from the western lot line and 15 feet from 22nd Street. It also would extend 18 feet east into the M1-5 portion of the lot. The existing rear yard would be maintained for the first two floors and increased to 30 feet on the third and fourth floors through removal of a portion of the existing building. Above the fourth floor the rear yard setback would be 30 feet. The total height of the building would be 250 feet plus approximately 35 feet of bulkhead. The two existing stairwells would be maintained, without access to the interior of the building, in order to preserve the Dan Flavin art installation, which would be open to the public.

VariANCES Sought

The lot is located on filled land with difficult soil conditions and a shallow water table, as is common in the area of West Chelsea where it is located. In addition, the applicant has determined that the existing building sits on a fragile foundation system consisting of unusually irregular pilings among boulders, cobbles and soft, silty clay.

The applicant has studied the site and has concluded that only the proposed development, with waivers permitting residential use to extend into a portion of the manufacturing district and increased bulk, would generate a reasonable financial return.

The applicant seeks waivers under the following sections of the Zoning Resolution in order to proceed with the proposed development:

- **ZR 42-10.** Residential use is not permitted as-of right in an M1-5 zoning district.

The residential portion of the proposed development would extend 50 feet into the M1-5 portion of the lot on the third and fourth floors and 18 feet into the M1-5 portion of the lot on the fifth through twentieth floors.

- **ZR 98-22, ZR 43-12.** Proposed residential and total floor area ratios exceed the maximums permitted.
- **ZR 98-423(a).** Proposed building height in the M1-5 portion of the zoning lot exceeds 135 feet.
- **ZR 98-423(b)(3).** The proposed highest 40 feet of the tower exceeds 85% of the gross area of the highest story directly below.
- **ZR 13-11, ZR 13-12, ZR 13-13.** The number of proposed accessory parking spaces exceeds the maximum number permitted for the number of residential dwelling units and commercial floor area on the zoning lot.

Seven accessory parking spaces are permitted, five for the 26 dwelling units and two for the approximately 7,000 sq. ft. of commercial space. The applicant is requesting 15.

Analysis and Discussion

The lot on which the proposed development would be built was split in 2005 by the rezoning that created the SWCD. The eastern half of the lot remained M1-5 while the western half was rezoned to C6-3 and incorporated into Subarea D of the district. An as-of-right building would permit a 135' high commercial building in the M1-5 portion of the lot and a 250' high commercial/residential building in the C6-3 portion of the lot. In addition, in order to have windows on the western side of the building, the building must be set back from the lot line, further reducing the size of an as-of-right building.

The applicant has determined that the combination of the split lot, the setback from the western lot line and the various unfavorable subsurface conditions precludes any possibility of making a reasonable financial return with an as-of-right building. CB4 recognizes that the split lot condition alone makes development more difficult, but we do not have the resources to undertake the detailed financial analysis necessary to determine whether a reasonable financial return is possible with a complying development. We therefore defer to BSA staff for this necessary analysis and would appreciate receiving a report about this aspect of the project.

CB4 has long sought to retain its M1-5 districts in order to maintain a more diverse community. The M1-5 portion of West 22nd Street between Tenth and Eleventh Avenues has four buildings with residential uses predating the creation of the SWCD: two buildings with two residences each (520 and 551 West 22nd Street), one building with twelve residential units (532 West 22nd Street) and one building with 30 residential units (525 West 22nd Street). We believe that in the context of the block the 18 foot encroachment of the proposed development into the M1-5 district is not unreasonable.

CB4 has long struggled with the issue of parking. The Board is a strong advocate of public transportation but recognizes that the automobile will remain an important mode of transportation and believes that reasonable accommodations for parking must be made. The proposed development would be permitted seven accessory parking spaces as-of-right, two for the approximately 7,000 sq. ft. of commercial space and five for the 26 dwelling units. The applicant is seeking an additional eight spaces, for a total of fifteen, and states that they will be for the use of the building's commercial and residential tenants only, not for transient use.

Although the applicant presented the requested eight additional parking spaces as being *de minimis* and not requiring traffic studies, the Board has been confronted by a series of requests for small additions to the amount of parking permitted as-of-right, and expects this to continue as development of recently rezoned areas proceeds. We have concluded that our best approach is to support the 20% ratio set by the Department of City Planning for our area and oppose additional parking

CB4 Recommendations

CB4's recommendations are subject to the condition that BSA confirm the applicant's contention that a complying building would not generate a reasonable financial return and that the desired waivers are the minimum necessary to achieve such a return.

We recommend that BSA approve variances for the proposed development under ZR 42-10, 43-12, 98-22, 98-423(a) and 98-423(b)(3). While the building would be located partially in an M1-5 district that the Board seeks to protect, the Board believes that the split lot condition makes the encroachment not unreasonable. While we would prefer that the top 40 feet of the building be built in compliance with ZR 98-423(b)(3), we have been persuaded that the proposed design is an appropriate solution.

We recommend that BSA deny variances for the proposed development under ZR 13-11, 13-12, and 13-13, and permit only the seven as-of-right parking spaces.

Sincerely,



Christine Berthet
Chair



J. Lee Compton
Co-Chair
Chelsea Land Use Committee



Betty Mackintosh
Co-Chair
Chelsea Land Use Committee

cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Corey Johnson, City Council
Brett Wolfe, Managing Director, Property Markets Group
Travis H. Terry, Chief Operating Officer, Capalino & Company