



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**CHRISTINE BERTHET**  
Chair

**JESSE BODINE**  
District Manager

January 14, 2015

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

**Re: BSA Cal. # 174-04-BZ**  
**Amendment to Variance for 124 West 24<sup>th</sup> Street**

Dear Ms. Perlmutter:

On the recommendation of its Chelsea Land Use Committee, and after a duly noticed public hearing at the regular Board meeting on January 7, 2015 Manhattan Community Board No. 4 (CB4), by a vote of 33 in favor, 3 opposed, 0 abstaining and 0 present but not eligible, voted to recommend denial of an application to reopen and amend the variance granted in 2005 to 124 West 24<sup>th</sup> Street (Block 799, Lots 1001-1026, the "Site") under BSA #174-04-BZ (the "Variance").

The application seeks restoration of unused development rights barred by BSA in granting the Variance, with the intention of transferring them to another parcel in a zoning lot to be created by a merger of contiguous parcels on Block 799. The Board believes that the proposed amendment would violate the conditions on which the Variance was granted. The Board also believes that the intended conveyance of the development rights to a proposed transient hotel would be detrimental to the public welfare.

**Background**

124 West 24<sup>th</sup> Street, the Site, is a seven story building located in an M1-6 zone, which does not allow residential uses as of right. On June 14, 2005 the Board of Standards and Appeals (BSA) granted to the then owner of the Site the Variance permitting the second through sixth floors of the Site to be converted to residential uses.

In seeking the Variance, the owner submitted evidence that the Site had unique physical conditions that created practical difficulties and unnecessary hardships in complying with the provisions of the Zoning Resolution regarding M1-6 districts. The owner also submitted feasibility analyses demonstrating that the value of the unused development rights were insufficient to generate a reasonable return from a conforming use.

BSA determined that a reasonable return would be generated by permitting non-conforming residential uses alone, without the sale of the unused development rights, and therefore granted the Variance with the condition that the FAR on the site not exceed 4.81, amended on February 24, 2006 to 4.843 by letter.

### **Application**

The current owner of the Site seeks an amendment to the Variance to approve the restoration and right to convey the unused development rights on the Site on the understanding that the owner will seek BSA approval to relocate the rights to a newly formed zoning lot. There will be no modifications made to the building on the Site.

### **CB4 Recommendation**

In granting the Variance in 2005, BSA determined that the non-conforming residential use was sufficient to generate a reasonable return and specifically capped the Site's FAR at the existing 4.843. BSA barred the use of the unused FAR because the non-conforming use alone provided the owner with a reasonable return, while the value of the development rights in 2005 added to the non-conforming use would have generated a return that BSA considered greater than reasonable. The value of the development rights in 2015, which is much greater than the 2005 value, added to the value of the non-conforming use would generate an even greater return, which BSA should consider unreasonably large. CB4 believes that permitting the restoration and transfer of the unused development rights from the Site would unfairly benefit an owner of the Site.

At the December 15, 2014 CB4 Chelsea Land Use Committee (CLU) meeting, a representative for the applicant provided an interpretation of BSA's 2005 decision to justify the proposed amendment to the 2005 variance. He contended that BSA meant that the FAR cap of 4.8 only pertained to the existing building for residential use, and that the unused FAR could be used for M1-6 uses such as a hotel. And that since there was so much discussion of the value of the unused development rights, BSA intended them to be transferred in the future by the owner of the property for commercial or manufacturing uses. CLU does not find evidence in BSA's decision that BSA intended this. The 2005 BSA decision (174-04-BZ), only states that regarding the "applicant's development rights...a conforming development would not yield a reasonable rate of return." The City Environmental Quality Review (CEQR#04-BSA-179M) states, among its conditions for the variance to residential conversion: "THAT the floor area ratio shall not exceed 4.81."

At the January 7, 2015 public hearing an owner of a residential unit in the building on the Site stated that they only wanted to be treated the same as their neighboring buildings and permitted to transfer their unused rights. The Board believes that the Site should not be treated in the same manner as neighboring sites because it was differentiated from them in permitting residential use in 2005 by the Variance.

We also believe that the proposed subsequent assemblage of development rights for the purpose of building a transient hotel larger than would be permitted by the development rights on a single

lot would be detrimental to the community. We have too many examples of large, out-of-scale hotels towering over their neighbors in Community District 4. CB4 strongly supports requiring special permits for the construction of transient hotels, as well as revised zoning including comprehensive bulk controls that would keep the height of buildings within limits appropriate for their neighborhoods.

CB4 believes that amending the Variance to permit the restoration and right to convey the "unused" development rights from the Site would constitute an unwarranted excess economic benefit, to one or more of the owners, and would be detrimental to the public welfare. We therefore recommend that BSA deny the application.

Sincerely,



Christine Berthet  
Chair



J. Lee Compton  
Co-Chair  
Chelsea Land Use Committee



Betty Mackintosh  
Co-Chair  
Chelsea Land Use Committee