

128-06-BZ
CEQR #06-BSA-100M

APPLICANT– Juan D. Reyes III, Esq., for Atlantic Walk, LLC, owner.

SUBJECT – Application June 16, 2006 – Zoning variance pursuant to ZR §72-21 to allow a nine-story residential building in an M1-5 district (Area B-2 of Special Tribeca Mixed Use District). Twenty Six (26) dwelling units and twenty six (26) parking spaces are proposed. The development would be contrary to use (Z.R. §111-104(d) and §42-10), height and setback (Z.R. §43-43), and floor area ratio regulations (Z.R. §111-104(d) and §43-12). The number of parking spaces exceeds the maximum allowed is contrary to Z.R. §13-12.

PREMISES AFFECTED – 415 Washington Street, west side of Washington Street, corner formed by Vestry Street and Washington Street, Block 218, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Juan Reyes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 104147317, reads in pertinent part:

- “1. The proposed number of stories within the front wall is contrary to ZR 111-104(d)1 and ZR 43-43.
- 3. The proposed residential use (UG2) M1-5 in TMU, area B2 is contrary to ZR 111-104(d) and ZR 42-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5 zoning district within Area B-2 of the Special Tribeca Mixed Use District, the construction of a nine-story with cellar, 22-unit residential condominium building, which is contrary to ZR §§ 111-104(d), 43-43 and 42-10; and

WHEREAS, at the conclusion of the hearing process, the applicant proposed a building that would have a residential floor area of 51,172 sq. ft., a Floor Area Ratio (FAR) of 5.5, a height of 105 ft., a street wall height of 85 ft., complying setbacks, lot coverage of 80 percent, and a 30 ft. rear yard; and

WHEREAS, the applicant originally proposed a nine-story building with a cellar and sub-cellar, an FAR of

6.02, a lot coverage of 85.97 percent, and 26 parking spaces (located in the cellars), and

WHEREAS, this proposal would have required additional waivers for maximum FAR and maximum number of parking spaces, and also would have had non-complying lot coverage and a non-complying rear yard; and

WHEREAS, in response to concerns of the Board about the proposed FAR not being consistent with the degree of hardship present on the site, the construction costs associated with the proposed parking in the sub-cellar, and the lack of a complying rear yard, the applicant revised the proposal to the current version; and

WHEREAS, however, as reflected below, the Board disagrees that an FAR of 5.5 devoted to residential use (which does not comply with the underlying zoning district maximum), reflects the minimum variance necessary for the owner to obtain relief; and

WHEREAS, the Board notes that the applicant provided a revised 5.0 FAR scenario, the plans of which reflect a reasonable unit layout; and

WHEREAS, the Board has reviewed this scenario, and as further explained below, it concludes that it will realize a reasonable return and is therefore the minimum variance necessary; and

WHEREAS, accordingly, the Board approves a building with the following parameters: 22 units, nine stories, a maximum residential and total FAR of 5.0, zoning floor area of 46,520 sq. ft., a total height of 105’-6”, a street wall height of 85’-0”, a setback of 20’-0”, and a rear yard of 30 feet; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in the *City Record*, with continued hearings on December 12, 2006 and January 23, 2007, and then to decision on March 13, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson and Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of the proposed use change, but only for a building with an FAR of 5.0, not the initially proposed FAR of 6.02; and

WHEREAS, certain neighbors and civic associations provided testimony in opposition to this application, citing concerns about the suggested findings and construction-related issues; the relevant concerns are discussed below; and

WHEREAS, the site is approximately 9,304 sq. ft., and is located at the corner of Washington Street and Vestry Street; and

WHEREAS, the site is located in the Tribeca North Historic District (the “TNHD”); and

WHEREAS, the applicant notes that on August 23, 2006, the City’s Landmarks Preservation Commission (“LPC”) issued a Certificate of Appropriateness (the

1 The Board notes that ZR § 111-104(d) has been re-designated ZR § 111-104(e) in a recent text amendment; however, the text of the provision remains the same and this has no bearing on the Board’s waiver of the provision.

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“CA”) for the originally proposed building; and

WHEREAS, the site has most recently been used as a parking lot, but was historically developed with seven-story manufacturing buildings (from approximately 1900 to 1950) and then a gas station (from 1950 to approximately 1976); and

WHEREAS, the applicant represents that the foundations of the prior manufacturing buildings, including below-grade party walls, remain on the site; and

WHEREAS, additionally, the site is currently undergoing remediation under the supervision of the State’s Department of Environmental Conservation; and

WHEREAS, because the proposed residential development does not conform to permitted uses in the subject zoning district, and because the street wall height is non-complying, the above-noted wavier requests are necessitated; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance and conformance with applicable regulations: (1) costs related to poor soil conditions on the site; (2) costs associated with addressing the existing foundations from the prior buildings; (3) foundation construction costs related to the presence of the site within the 100 and 500-year flood plains; and (4) environmental remediation costs; and

WHEREAS, as to the poor soil conditions, the applicant notes that the site’s soil consists of loose fill material underlain by loose to medium dense sand at depths below the groundwater level; and

WHEREAS, the applicant claims that this condition afflicts less than 20 percent of the properties within the TNHD, as evidenced by a graph submitted with the applicant’s engineering report (the “Report”); and

WHEREAS, the applicant claims that because of this condition, shallow footings, which are less expensive, cannot be used; instead, a deep foundation system using piles must be installed; and

WHEREAS, as to the pre-existing party walls, the applicant notes that they must remain in place as they support adjacent buildings; and

WHEREAS, the applicant claims that the existing party walls will require special structural details to allow the proposed building’s foundation system to cantilever over the party walls above surface grade; and

WHEREAS, further, at hearing, the project engineer stated that the buildings to the east and west are on shallow foundation systems, which must be protected through the use of drilled piles at this location; and

WHEREAS, the engineer also stated that underpinning is more difficult and expensive since its double-width in depth due to the shared foundation walls; and

WHEREAS, as to the location of the site within the flood zone, the applicant states that 10 percent of sites within the TNHD are part of the 100 year flood plain and 15 percent are part of the 500 year flood plain; and

WHEREAS, the applicant states that the 100-year flood level is more than 4 to 5 feet above the design groundwater level for the upland buildings, and, at the subject site, this will require resistance in the form of dead weight or uplift anchors; and

WHEREAS, as to environmental contamination, the applicant notes that a large portion of the soil mass is contaminated with volatile organic compounds that must be removed prior to residential development; and

WHEREAS, the applicant also notes that the presence of contaminated soil is relatively uncommon in the TNHD; and

WHEREAS, the Board agrees that the site is burdened by a convergence of sub-surface factors that increase construction and site preparation costs; and

WHEREAS, the Board observes that the Report provides a cost comparison between a site not similarly burdened based on factors such as dewatering, excavation and disposal of contaminated soil, underpinning, piles, pressure slab, waterproofing, and engineering support; and

WHEREAS, the applicant established that the premium costs related to the cited physical conditions are approximately 1.9 million dollars; and

WHEREAS, the Board agrees that these costs compromise the viability of a conforming development on the site; and

WHEREAS, the Board notes that the cited unique conditions and the costs associated with them were questioned by an engineer hired by those in opposition to the application; and

WHEREAS, however, the Board finds that these concerns were satisfactorily answered in a response from the project engineer, submitted as an attachment to the applicant’s November 21, 2006 submission; and

WHEREAS, the Board further notes that counsel to the opposition suggests that the Board should not credit the presence of environmental contamination as a unique physical condition; and

WHEREAS, the Board agrees that not every instance of environmental contamination should form the basis, or a part thereof, of a variance application; and

WHEREAS, nevertheless, where the contamination was the result of a lawful commercial operation, was not intentional but merely a cumulative by-product of such operation, and occurred in an era that predates extensive environmental protection regimes, the Board has considered such contamination to be a legitimate hardship; and

WHEREAS, further, the Board notes that even without consideration of the environmental contamination, the other cited unique physical conditions would still prevent a viable conforming development; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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WHEREAS, initially, the applicant submitted a feasibility study that analyzed an as of right 5.0 FAR commercial building; and

WHEREAS, the applicant concluded that such a scenario would result in a negative return, due to the above-cited physical conditions; and

WHEREAS, however, the Board had concerns about the claimed site valuation; and

WHEREAS, specifically, the Board felt that the site valuation was inflated due to the use of certain recent sale comparables that skewed the valuation; and

WHEREAS, the Board also notes that the site valuation was high relative to other recent variance cases in the vicinity; and

WHEREAS, the Board suggested that the applicant review comparable sales with the Area B-2 of the Special Tribeca Mixed Use District for undeveloped or underdeveloped sites, and not include variance-affected sites; and

WHEREAS, in a subsequent submission, the applicant reduced the site valuation based on comparables that the Board finds acceptable; and

WHEREAS, thus, based upon its review of the subsequent submission of the applicant, the Board has determined that because of the subject lot'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; and

WHEREAS, as to use, the Board observes that the site is on a block with buildings that contain Joint Work/Living Quarters for Artists; and

WHEREAS, the Board also observes that there are residential buildings across Greenwich Street directly to the east and northeast, and a new residential building under construction across Washington Street; and

WHEREAS, the Board finds that the introduction of 22 residential units in this location will not negatively affect the mixed-use character of the immediate neighborhood; and

WHEREAS, further, the Board notes that the proposed residential use of the site will not negatively affect any conforming uses in the neighborhood, which are already accustomed to a considerable residential presence; and

WHEREAS, as to bulk, the Board notes at the outset that the building approved herein reflects a reduced FAR and lot coverage and an increased rear yard from the original proposal, which makes it more compatible with the character of the neighborhood; and

WHEREAS, the Board also observes that the design of the originally proposed building was approved by LPC, as reflected by the C of A; and

WHEREAS, the applicant also states that the proposed building would be compatible in terms of height with existing buildings adjacent or very close to the site; and

WHEREAS, specifically, on the subject block, the applicant cites to a 99'-11" tall building to the east, a 116'-0" tall story building to the south, and an 83'-10" tall building on the corner of Laight and Greenwich Streets; and

WHEREAS, the applicant also cites to new nine and twelve-story buildings located to the west of the site, also on the same block; and

WHEREAS, the Board agrees that the proposed height and street wall height of the building will be compatible with existing buildings in the vicinity; 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, during the course of the hearing process, the opposition suggested that the site conditions should have been known to the developer prior to purchase of the site, and that any hardship subsequently discovered should be characterized as self-created; and

WHEREAS, the Board disagrees, noting that the finding set forth at ZR § 72-21(d) specifically provides that purchase with knowledge of a site's hardships does not preclude the grant of a variance; and

WHEREAS, in any event, the opposition did not provide conclusive proof that the developer knew of all hardships related to the site prior to purchase; and

WHEREAS, thus, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the Board is granting a residential variance to the applicant at a lesser FAR than is proposed; and

WHEREAS, this is due to serious concerns the Board has regarding the sell-out value per square foot of the proposed condominium units (the applicant claims that for a 5.0 FAR residential building, the sell out value would be approximately \$1,080 per sq. ft.); and

WHEREAS, at the outset of the hearing process, the Board observed that the claimed sell-out value is low relative to the sell-out value cited in other recent variance applications in the vicinity; and

WHEREAS, for instance, in BSA Cal. No. 297-05-BZ, granted on July 11, 2006, which was a variance application for a residential building at 31-33 Vestry Street (also in Area B2 of the Special Tribeca Mixed Use District), the claimed sell-out value per square foot was \$1,137; and

WHEREAS, likewise, in BSA Cal. No. 181-06-BZ, granted on February 13, 2007, which was a variance application for a residential building at 471 Washington Street (again, in Area B2), the claimed sell-out value per square foot was \$1,246; and

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WHEREAS, both of these applications were for buildings with a total FAR of 5.0; and

WHEREAS, further, the Board questioned the comparables of recent sales used by the applicant to arrive at the claimed sell-out value; and

WHEREAS, the initial set of comparables submitted by the applicant consisted of many properties that were geographically distant from the subject site, and thus were not appropriate comparables; and

WHEREAS, accordingly, the Board directed the applicant to submit a set of comparables that are similar to the proposed units in terms of date of construction, views, location, and other pertinent factors, or to justify why the existing set of comparables were in fact similar; and

WHEREAS, after the Board brought this to the applicant's attention, a second set of comparables was submitted that reflected more geographically comparable recent sales; and

WHEREAS, these comparables ranged from 813 dollars to 1,538 dollars per square foot, which is a significantly broad range; and

WHEREAS, in addition to this second set of comparables, the Board received a submission from a marketing executive familiar with the Tribeca residential market in support of the opposition (the "Opposition Report"), which provided a list of recent condominium sales in the area; and

WHEREAS, the Opposition Report indicated that the average per sq. ft. price of units recently sold primarily in the immediate vicinity of the subject site was significantly higher per sq. ft. than that proposed by the applicant; and

WHEREAS, the Board asked the applicant to address the comparables cited by the opposition; and

WHEREAS, the applicant, in a submission dated February 6, 2007, states that the majority of the comparables used by the opposition are not truly comparable in that they are either on higher floors than the proposed units and have views or are appointed with high-end finishes that increase the sell-out value; and

WHEREAS, the applicant suggests that the claimed sell-out value for the proposed units reflects that they are predominantly at lower floors and don't have views and that high-end finishes have not been added to the proposed valuation; and

WHEREAS, however, the Board notes that the applicant's response fails to refute with any specificity each and every comparable cited in the Opposition Report; and

WHEREAS, consequently, the applicant's blanket refutation of all the comparables is without any basis; and

WHEREAS, further, the Board has reviewed the Opposition Report and notes that most of the cited units, with the exception of those located at 145 Hudson Street, are at the 9th floor or lower, which calls into question the argument that they are all superior to the proposed units in terms of height and views; and

WHEREAS, even when excluding the 145 Hudson

Street comparables, the average sell-out value reflected in the Opposition Report is still significantly higher than the applicant's; and

WHEREAS, based upon its personal knowledge of the claimed sell-out value in other recent matters, as well as upon its review of the Opposition Report and the applicant's response, the Board finds that the claimed sell-out value for the 5.0 FAR residential building was underestimated; and

WHEREAS, the Board concludes that with more reasonable sell-out values ascribed to the proposed units, a 5.0 FAR building will realize a reasonable return; and

WHEREAS, in addition to the serious concerns about the proposed sell-out value, the Board also notes that the applicant's submissions reflected inconsistency as to sellable residential floor space and the development costs related to the 5.0 FAR scenario; and

WHEREAS, specifically, as reflected in the various submissions, in November 2006, the construction costs for this scenario decreased from the September 2006 submission, but then increased again in the December 2006 submission; and

WHEREAS, the Board also notes that that there was a similar disparity as to the amount of residential floor space; and

WHEREAS, the Board observes that no adequate explanation for the disparity between submissions exists in the record; and

WHEREAS, the Board observes that the lower construction costs estimate would support the conclusion that a 5.0 FAR scenario could be viable; and

WHEREAS, while the applicant has contended that a 5.0 FAR building would not realize a reasonable return since that amount of floor area would not fill up the building envelope approved by LPC, the Board notes that double height spaces could be created within individual units that would enhance the value of the units; and

WHEREAS, further, the Board observes that the reduced FAR could be achieved by eliminating a less viable unit proposed at the rear of the building; and

WHEREAS, in sum, the Board finds that a 5.0 FAR building is the minimum variance necessary for the owner to obtain relief; and

WHEREAS, the Board notes that the finding set forth at ZR § 72-21(e) provides that it may permit a lesser variance than that applied for by the applicant; and

WHEREAS, the Board also notes that though it finds it appropriate to approve only an FAR of 5.0, the applicant is receiving a significant use waiver as well as a street wall waiver; and

WHEREAS, based upon the above, 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 Type I action pursuant to Sections 617.4(b)(10) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the

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Final Environmental Assessment Statement (EAS) CEQR No. 06BSA100M, dated June 16, 2006; 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; 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, within an M1-5 zoning district within Area B-2 of the Special Tribeca Mixed Use District, the construction of a nine-story with cellar, 22-unit residential condominium 5.0 FAR building, which is contrary to ZR §§ 111-104(d), 43-43 and 42-10, *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 December 26, 2006"-ten (10) sheets; and *on further condition*:

THAT the following shall be the parameters of the building: 22 units, nine stories, a maximum residential and total FAR of 5.0, zoning floor area of 46,520 sq. ft., a total height of 105'-6", a street wall height of 85'-0", setbacks as indicated on the BSA-approved plans, and a rear yard of 30 feet;

THAT all construction shall be performed in compliance with Building Code and LPC and DOB-imposed requirements concerning the protection of adjacent buildings;

THAT this approval is limited to the relief granted

A true copy of resolution adopted by the Board of Standards and Appeals, March 13, 2007.

Printed in Bulletin No. 12, Vol. 92.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall 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, March 13, 2007.