

**133-04-BZ**

**CEQR #04-BSA-145M**

APPLICANT - Jay A. Segal, Esq., for 866 3rd Next Generation Hotel, LLC, c/o The Witkoff Group, owner.

SUBJECT - Application March 16, 2004 - under Z.R. §72-21 to permit a variance to vary the applicable rear yard requirements (from thirty feet to twenty) triggered by an as of right conversion of floors 12 through 30, and a portion of the lobby, of a thirty-story building, from hotel use to residential use (Use Group 6), located on a site split by C6-6 and C6-4.5 zoning districts, contrary to Z.R. §§23-47 and 54-31.

PREMISES AFFECTED - 866 Third Avenue, west side, between 52<sup>nd</sup> and 53<sup>rd</sup> Streets, Block 1307, Lot 1004, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES - None.

**ACTION OF THE BOARD** - Application granted on condition.

**THE VOTE TO GRANT** -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION** -

WHEREAS, the decision of the Borough Commissioner, dated February 23, 2004, acting on DOB Application No. 103701353, reads:

“The proposed change of use from commercial to residential creates a new non-complying rear yard for the residential use in that the required (MIN) rear yard is 30’-0” as per section 23-47 ZR. Therefore it is also contrary to section 54-31(ZR)”;

and  
WHEREAS, a public hearing was held on this application on June 22, 2004 after due notice by publication in *The City Record*, and then to decision on July 13, 2004; 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 Babbar, and Commissioners Miele, and Chin; and

WHEREAS, Community Board 6, Manhattan recommended approval of this application; and

WHEREAS, this is an application under Z.R. §72-21, to waive the applicable rear yard requirements triggered by an as of right conversion of floors 12 through 30, and a portion of the lobby, of a thirty-story building, from hotel use to residential use (Use Group 6), located on a site split by C6-6 and C6-4.5 zoning districts, contrary to Z.R. §§23-47 and 54-31; and

WHEREAS, the subject lot is located on Third Avenue between 52<sup>nd</sup> and 53<sup>rd</sup> Streets, is comprised of one tax lot with a total lot area of approximately

25,097 sq. ft., and is divided between two commercial zoning districts (C6-6 and C6-4.5); and

WHEREAS, the lot is currently occupied with an existing thirty-story building, covering the entire zoning lot and containing 431,113 sq. ft. of floor area, occupied by: (1) retail establishments on the ground floor, (2) an outpatient clinic operated by the Memorial Sloan Kettering Cancer Center, which occupies a portion of the 1<sup>st</sup> floor and floors 2 through 11 and (3) the Courtyard Marriot Hotel (the “Hotel”) that currently has meeting rooms, a restaurant and bar on the 12<sup>th</sup> floor, 308 guest rooms on floors 13 through 30, and a lobby and service area on the first floor; and

WHEREAS, the proposed development contemplates the conversion of the Hotel portion of the existing building into approximately 200 residential apartments, including 87 studios, 94 one-bedroom units and 19 two-bedroom units; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardships in developing the subject lot in compliance with underlying district regulations: (1) the unique configuration of the Hotel’s floors cannot earn a reasonable return from any commercial use; (2) the deep floor-plates on the building’s upper floors allow for an unusually low number of guest rooms per floor and for this reason the Hotel is not financially productive as compared to other Hotels in the same market; and

WHEREAS, the applicant submitted an architectural/financial analysis of eleven comparable hotel properties that demonstrates that standard hotel floor-plates (typically 50 by 80 feet) service a double-loaded corridor with rooms on both sides and typically generate rooms with an average of 353 square feet; and

WHEREAS, if the Hotel had sufficient floor plates to achieve this average efficiency of 353 square feet, it would have 570 rooms on floors 13-30, which is 263 rooms more than the current 307 rooms, and this difference produces the financial inefficiencies discussed above; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulties in developing the site in conformity with the current zoning; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that the return on equity on the Hotel is not reasonable, and that the high costs of converting the building to another conforming commercial use, such as office use, would also result in an unreasonable return on equity; and

WHEREAS, the proposed variance is required

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because, while the actual residential conversion is permitted as-of-right under the current zoning, compliance with residential rear yard requirements would entail demolition of a portion of the building, and the financial and logistical requirements of such a project would effectively eliminate the financial benefits of the conversion; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood since there would be no exterior alteration of the existing building, and the other uses in the building would not be changed; and

WHEREAS, the applicant represents that a variance to modify the rear yard requirements for the interior portion of the lot from (30) thirty feet to (20) twenty feet would not alter the essential character of the neighborhood as the lack of a full 30 foot rear yard affects only the interior lot portion of the existing building; and

WHEREAS, therefore, 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 the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, therefore, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the Board has conducted an environmental review of the proposed action and the Environmental Assessment Statement and Supplemental Report, and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

Resolved, that the Board of Standards and

Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to vary the applicable rear yard requirements (from thirty feet to twenty) triggered by an as of right conversion of floors 12 through 30, and a portion of the lobby, of a thirty-story building, from hotel use to residential use (Use Group 6), located on a site split by C6-6 and C6-4.5 zoning districts, contrary to Z.R. §§23-47 and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application "Received March 16, 2004"-(9) sheets; and *on further condition*:

THAT substantial construction be completed in accordance with Z.R. §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) only;

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

THAT should DOB determine that a 30 foot rear yard is required on the foyer level of the building, the Board has no objection to the waiver granted herein being made applicable to such level;

THAT all light and air requirements shall be as approved by DOB;

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2004.

**A true copy of resolution adopted by the Board of Standards and Appeals, July 13, 2004.**  
**Printed in Bulletin Nos. 28-30, Vol. 89.**

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