

**136-06-BZ**  
**CEQR #06-BSA-106K**

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under §72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§42-00), FAR (§43-12), and rear yard (§43-26 and §43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Kenneth Fisher.

**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 Brooklyn Borough Commissioner, dated April 4, 2007, acting on Department of Buildings Application No. 301564162, reads, in pertinent part:

- “1. The proposed conversion and enlargement of an existing manufacturing building to a residential use when located in a M2-1 zoning district is contrary to Section 42-10 of the Zoning Resolution.
2. The existing building is a non-complying structure in that it exceeds the maximum allowable Floor Area Ratio of 2.0 permitted under Section 43-12 of the Zoning Resolution. As such, the addition of the fifth floor will constitute an increase in degree of non-compliance contrary to Section 54-31 of the Zoning Resolution.
3. The proposed residential enlargement of the fifth floor with a rear yard of less than 20 feet is contrary to Section 43-26 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M2-1 zoning district within the Fulton Ferry Historic District, the residential conversion and one-story enlargement of three adjacent four-story buildings, with ground floor retail and 15 dwelling units, which is contrary to ZR §§ 42-10, 43-12, 43-26, and 54-31; and

WHEREAS, a public hearing was held on this application on February 13, 2007, after due notice by publication in the *City Record*, with a continued hearing on March 20, 2007, and then to decision on May 8, 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, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the north side of Old Fulton Street, between Front Street and Water Street, within an M2-1 zoning district; and

WHEREAS, the site comprises three tax lots (Lots 7, 8, and 9) and has a total lot area of 5,770 sq. ft.; the tax lots are proposed to be merged into a single zoning lot, tentatively Lot 9; and

WHEREAS, from east to west, tax lot 7 has a depth ranging from 76 feet to 90 feet; tax lot 8 has a depth of 106 feet; and tax lot 9 has a depth of approximately 60 feet; and

WHEREAS, each lot is occupied by a four-story building and the buildings are separated by party walls; and

WHEREAS, the applicant proposes to retain the existing buildings which are currently vacant; and

WHEREAS, the applicant proposes to demolish portions of the second, third, and fourth floors at the rear of the buildings on tax lots 7 and 8 and to retain only the first floor of those portions; and

WHEREAS, further, the applicant proposes to construct a partial fifth floor, which will be setback 28 feet from the street line at the eastern side of the property and 29'-6" from the street line at the western side of the property; and

WHEREAS, the proposed building will have a total floor area of 22,948 sq. ft. (3.98 FAR), a residential floor area of 17,562 sq. ft. (3.08 FAR), a commercial floor area of 5,237 sq. ft. (0.90 FAR), a height ranging from 42'-7" at the west to 44'-5" at the east before the setback, due to a slope, and a total height ranging from 51'-7" at the west to 52'-11" at the east, without bulkheads; and

WHEREAS, the cellar level will be occupied by commercial use and mechanicals; and

WHEREAS, the first floor will be occupied by retail use (UG 6) and a small residential entrance; and

WHEREAS, the second and third floors will each be occupied by five residential units; the fourth floor will be occupied by five residential duplex units, three of which will be duplexes with space on the fifth floor and a fourth unit will have access to outdoor space on the fifth floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; (2) the site is irregularly-shaped; and (3) the existing historic buildings are obsolete and cannot accommodate a conforming use; and

WHEREAS, as to the size, the applicant represents that tax lot 9 is considered a shallow interior lot pursuant to ZR § 23-52; and

WHEREAS, further, tax lot 9 also has a width of

**136-06-BZ**  
**CEQR #06-BSA-106K**

only approximately 21'-4"; tax lot 8 has a width of 25'-0"; and tax lot 7 has a width of 24'-0"; and

WHEREAS, as noted above, the tax lots also have depths ranging from 60'-2" at the western property line to 106'-0" at a small triangular point in the middle, which creates a jagged rear lot line; and

WHEREAS, as to the site's shape, tax lots 7 and 8 have a rectangular shape, like tax lot 9 at the street frontage, but they come to a sharp angle along their rear lot lines; and

WHEREAS, individually, the three lots have small size and irregular shape, but even as a merged zoning lot, it is small (5,000 sq. ft.) and irregularly-shaped, and cannot support a conforming use; and

WHEREAS, as to the historic use of the buildings, the applicant represents that the buildings are at least 150 years old and historic records reflect that the buildings were originally built for local retail on the ground floor and residential use above and were not designed for commercial uses, exclusively; and

WHEREAS, further, records show that the westernmost building (on tax lot 9) was occupied by a commercial use on the first floor and residential uses above; records show that the other two buildings may have existed even prior to the 1820s and were occupied by commercial and industrial uses, and a hotel at various times; and

WHEREAS, the applicant represents that in recent years, the buildings, which are within between 50 and 75 feet of the Brooklyn Bridge, have been largely vacant or used for storage; and

WHEREAS, the applicant asserts that although there has been some historic conforming use at the site, the buildings are not viable for modern manufacturing uses, which require large unobstructed floor plates, truck access, and greater ceiling heights; and

WHEREAS, as to the obsolescence, the applicant states that the buildings cannot accommodate loading docks and do not have elevator space large enough for freight; and

WHEREAS, the floor plates, even of a combined building, are too small for manufacturing use and the two small openings between the buildings of approximately five feet in diameter that connect the three buildings cannot be enlarged without great cost because they penetrate load-bearing walls; and

WHEREAS, based upon the above, 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 conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right commercial building and a mixed-use residential/commercial use without a penthouse; and

WHEREAS, the applicant concluded that such scenarios would result in a loss, due to the unique conditions of the site; and

WHEREAS, the applicant represents that the partial fifth floor is required to make the project feasible,

particularly with the demolition and loss of floor area at the rear portion of the building; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance 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, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, the applicant states that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 15 dwelling units and ground floor retail will not impact any nearby conforming uses; and

WHEREAS, further, the applicant represents that the area now known as the Fulton Ferry Historic District was characterized by residential use until the Brooklyn Bridge was built; and

WHEREAS, specifically, the applicant represents that the row of buildings on Old Fulton Street, from numbers 7 through 23 were all designed for commercial use on the ground floor and residential use on the floors above at about the same time; the applicant represents that many of them have continually been used for those purposes; and

WHEREAS, additionally, across the street from the site is a large nine-story building occupied by residential use; and

WHEREAS, the applicant represents that sound attenuation measures will be followed in order to minimize any impact due to the proximity to the Brooklyn Bridge; and

WHEREAS, the proposed demolition at the rear of the building will increase the depth of the rear yard and the amount of open space; and

WHEREAS, additionally, the applicant represents that the partial-fifth floor will be setback above the fourth floor so as to minimize its visibility from the street; and

WHEREAS, the applicant proposes to restore the facades to be in keeping with their historic character; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission, dated February 15, 2007; 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

**136-06-BZ  
CEQR #06-BSA-106K**

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

WHEREAS, the Board observes that the proposed building of 15 dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the Board notes that the proposed net increase in floor area and FAR is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

WHEREAS, accordingly, 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 ZR § 72-21; and

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 has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA106K, dated June 29, 2006 and an EAS addendum for potential noise impacts dated April 23, 2007; 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, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a June, 2006 Environmental Assessment Statement, (2) an April, 2007 EAS addendum for potential noise impacts and (3) a July, 2002 Phase I Environmental Site Assessment; and

WHEREAS, these submissions specifically examined the proposed action for potential impacts for hazardous materials, noise and air quality; and

WHEREAS, a Restrictive Declaration was executed on April 20, 2007 and recorded on April 25, 2007 for the subject property to address hazardous materials concerns; 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

*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 M2-1 zoning district within the Fulton Ferry Historic District, the residential conversion and one-story enlargement of three adjacent four-story buildings, with ground floor retail and 15 dwelling units, which is contrary to ZR §§ 42-10, 43-12, 43-26, 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 marked "Received April 23, 2007"– thirteen (13) sheets and "Received May 1, 2007"– one (1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: five stories; a total floor area of 22,948 sq. ft. (3.98 FAR); a residential floor area of 17,562 sq. ft. (3.08 FAR); a commercial floor area of 5,237 sq. ft. (0.90 FAR); an average street wall height of 46.7 feet; and an average total height of 53.7 feet, without bulkheads;

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; and

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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, May 8, 2007.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 8, 2007.**

**Printed in Bulletin No. 18-19, Vol. 92.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**