

150-04-BZ

CEQR#04-BSA-158M

APPLICANT - The Agusta Group, for Shun K. Fung, owner.

SUBJECT - Application August 3, 2004 - under Z.R. §72-20 to permit, within a C6-2G zoning district in the Special Little Italy District, the proposed construction of a new four-story building, with a retail store and one-car garage on the ground floor, a studio on the 2nd floor and a duplex on the 3rd and 4th floors, contrary to Z.R. §§ 23-32 and 109-122.

PREMISES AFFECTED - 129 Elizabeth Street, west side, 60'-5' south of Broome Street, Block 470, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES -

For Applicant: Sol Korman.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin..... 4
Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated March 19, 2004, acting on Department of Buildings Application No. 103299048, reads, in pertinent part:

"1. As per section ZR 109-01, Section ZR 35-21 still applies. Therefore the lot dimension is contrary to Section ZR 23-32. Minimum 1700 s.f. is required.

3. Proposed plan indicates lot coverage exceeding 60%; hence it is not permitted by ZR Section 109-122."; and

WHEREAS, a public hearing was held on this application on September 28, 2004, after due notice by publication in the City Record, with continued hearings on November 16, 2004, January 11, 2005, and February 15, 2005, and then to decision on March 29, 2005; 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, Commissioner Miele and Commissioner Chin; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within a C6-2G zoning district in the Special Little Italy District, the proposed construction of a new four-story building, with a retail store and one-car garage on the ground floor, a studio on the 2nd floor and a duplex on the 3rd and 4th floors, contrary to Z.R. §§ 23-32 and 109-122; and

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

WHEREAS, an owner of property located near the site submitted correspondence to the Board, purportedly on behalf of others in the community, asking the Board not to grant the variance; and

WHEREAS, the original version of this application contemplated a five-story plus cellar mixed use building with a commercial use on the ground floor and residential on the upper floors, with

a floor area ratio ("F.A.R.") of 4.7, a total floor area of 3,837 sq. ft., and a total building height of 73 ft., 6 in.; and

WHEREAS, in an interim proposal, the applicant lowered the height of each floor to 10 ft., and lowered the total building height to 50 ft., 6 in.; and

WHEREAS, the current version of this application contemplates a four-story building, with a complying F.A.R. of 4.1, a total floor area of 2,890 sq. ft., a total building height of 43 ft., 6 in., and 100% lot coverage; and

WHEREAS, the subject premises is an 815 sq. ft. lot, with a depth of 23 ft., 8 in.; and

WHEREAS, the applicant represents that the lot is a pre-existing lot; and

WHEREAS, the applicant further represents that the lot size is less than half of the required lot size for any residential development; and

WHEREAS, the applicant states that the small lot size and shallow lot depth are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations; and

WHEREAS, the applicant represents that due to the small size of the lot, a complying development will result in uncomfortable living space for residential use and inadequate space for commercial development; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformity with current applicable zoning regulations; and

WHEREAS, the Board asked the applicant to consider an alternative conforming use scenario, such as a commercial use, that would be feasible on the subject site; and

WHEREAS, in response, the applicant submitted a feasibility analysis that showed that a conforming commercial use would not result in a reasonable return; and

WHEREAS, the Board also asked the applicant to explore any income that could be generated from a commercial use in the cellar, such as a retail store or cellar storage space for a retail use; and

WHEREAS, the applicant represents that a retail store in the cellar is not feasible due to the small size of the site and the inability to comply with ADA and egress requirements; and

WHEREAS, the applicant also submitted a feasibility analysis of a public parking lot scenario, and determined that such use would not provide a reasonable return; and

WHEREAS, the Board requested that the applicant further evaluate alternative development scenarios using an F.A.R. of 4.1; and

WHEREAS, in response, the applicant analyzed the following three alternatives: Alternative A - ground floor with retail and one-car garage, studio on the 2nd floor, and a duplex on the 3rd and 4th floors; Alternative B - ground floor with a retail store, studio on the 2nd floor and a duplex on the 3rd

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and 4th floors; and Alternative C - one duplex on the ground and 2nd floors and another duplex on the 3rd and 4th floors; and

WHEREAS, at the Board's direction, the applicant revised its application to Alternative A, as described above; and

WHEREAS, based upon the above, 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 the provisions applicable in the subject zoning district will provide a reasonable return; and

WHEREAS, the applicant represents that there are numerous multiple dwellings, between three and seven stories in height, surrounding the subject site; and

WHEREAS, the applicant represents that the height currently proposed for the building is consistent with the height of buildings in the neighborhood; and

WHEREAS, specifically, the applicant represents that buildings to the left of the subject site are approximately 63 ft. and 36 ft., 2 in., and a building to the right of the subject site is 41 ft., 6 in; and

WHEREAS, the applicant submitted a map of the surrounding neighborhood which illustrates the above representations; and

WHEREAS, the Board notes that the significant reduction in F.A.R. and height from the applicant's initial proposal to the applicant's current proposal is more compatible with the built conditions surrounding the site; and

WHEREAS, additionally, the Board notes that a 4.1 F.A.R. is the maximum permitted F.A.R. for interior lots in the Special Little Italy District; 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, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, after taking direction from the Board as to the proper amount of relief, the applicant modified the development proposal to the current version; 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 Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted Action pursuant to 6 NYCRR, Part 617; 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. 04-BSA-158M dated April 1, 2004; 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.

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 the required findings under Z.R. § 72-21, to permit, within a C6-2G zoning district in the Special Little Italy District, the proposed construction of a new four-story building, with a retail store and one-car garage on the ground floor, a studio on the 2nd floor and a duplex on the 3rd and 4th floors, contrary to Z.R. §§ 23-32 and 109-122; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 31, 2005" - (4) sheets; and on further condition:

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

Adopted by the Board of Standards and Appeals, March 29, 2005.

A true copy of resolution adopted by the Board of Standards and Appeals, March 29, 2005.

Printed in Bulletin Nos. 15-16, Vol. 90.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.