

150-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Shun K. and Oi-Yee Fung, owners.

SUBJECT – Application May 2, 2014 – Amendment of a previously approved variance to permit the construction of a four-story building with retail space and one-car garage. C6-2G zoning district.

PREMISES AFFECTED – 129 Elizabeth Street, west side of Elizabeth Street between Broome and Grand Street, Block 470, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance, and plans, which, pursuant to ZR § 72-21, authorized the construction of a four-story building, with a retail use on the first floor and residential use on the upper three floors, in a C6-2G zoning district, within the Special Little Italy District, contrary to ZR §§ 23-32 and 109-122; and

WHEREAS, the applicant seeks to amend the previous grant and plans to reflect a reduction in the size of the subject lot from 815 sq. ft. of lot area to 789 sq. ft. of lot area, as a result of the settlement of an adverse possession claim; and

WHEREAS, a public hearing was held on this application on March 24, 2015, after due notice by publication in the *City Record*, with a continued hearing on May 12, 2015, and then to decision on June 23, 2015; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioners Montanez and Ottley-Brown; and

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

WHEREAS, the subject site is a vacant 789 sq. ft. lot with approximately 34 feet of frontage along Elizabeth Street, between Broome Street and Grand Street, and a depth of approximately 23 feet; and

WHEREAS, on March 29, 2005, under the subject calendar number, the Board granted a variance to permit the construction of a four-story building at the site with a retail store and one-car garage on the ground floor and residential use on the upper three floors, contrary to minimum lot area and lot coverage regulations set forth at ZR §§ 23-32 and 109-122; and

WHEREAS, on May 14, 2013, also under the subject calendar number, the Board granted an extension of time to complete construction until May 14, 2017; and

WHEREAS, at the time of the initial grant, the site contained 815 sq. ft. of floor area, however, upon settlement of an adverse possession claim brought by the owner of an adjacent parcel, the size of the subject site was reduced by approximately 26 sq. ft., reflecting the loss of a small triangular section of the premises along its northern lot line; and

WHEREAS, the applicant now seeks to amend the plans to reflect the reduction in the size of the lot and the site's changed configuration and to modify certain building conditions to compensate for the unique hardship associated with the lot's small size; and

WHEREAS, specifically, the applicant asserts that the further reduction in the size of the lot impacts the marketability of the commercial and residential units in the building; and

WHEREAS, the applicant states that the need to revise the site plan led to its request for the following additional relief: (1) 116 sq. ft. of additional floor area (2,890 sq. ft. were granted, 3,106.29 sq. ft. are proposed); (2) an increased FAR (3.55 FAR was granted, 3.94 FAR is proposed); (3) increased building height (a height of 43'-6" was granted, a height of 51'-0" is proposed); and (4) the addition of a mezzanine above the first floor of the building to provide additional retail space; and

WHEREAS, in response to the Board's inquiry about the uniqueness of the site conditions, the applicant submitted a letter from a licensed real estate broker stating that the floor plate of the proposed building is the smallest new development in the Nolita neighborhood and that the two proposed residential units are significantly smaller than typical new construction in the neighborhood; and

WHEREAS, the aforesaid letter also stated that the reduction in the size of the building, and attendant reduction in the sellable square footage of the building, would adversely impact the sales price of units in the proposed building; and

WHEREAS, accordingly the applicant seeks a minor addition to the floor area to modify the height of the residential units and add a mezzanine to the ground floor retail use of the building; and

WHEREAS, the applicant states that the increase in the building height is necessary to accommodate the addition of the mezzanine space, the provision of which required that the height of the first floor ceiling be increased from 13'-0" to 18'-0", allowing for an aggregate increase in the commercial floor area from 411 sq. ft. to 641 sq. ft. (including the mezzanine); and

WHEREAS, the applicant further states that the height of the floors on the 2nd, 3rd and 4th floors of the proposed building have increased by 1'-0" to provide improved light and air, increased storage space and additional space for mechanical, electrical and plumbing between floors, intended as relief from the loss of floor area resulting from the settlement of the adverse possession claim; and

150-04-BZ

Adopted by the Board of Standards and Appeals,
June 23, 2015.

WHEREAS, the applicant asserts that none of the original findings the Board made are disturbed by the minor amendments to the plans, which were triggered by the need to revise the site plan due to the change in lot size; and

WHEREAS, the applicant notes that the floor area, FAR, building height, and number of stories all comply with the underlying zoning regulations and are consistent with surrounding conditions and the Board's original finding pursuant to ZR § 72-21(c); and

WHEREAS, the applicant represents that the revised plans do not trigger any new zoning non-compliance; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested changes do not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated March 29, 2005, and extended by resolution dated May 14, 2013, to grant the noted modifications to the previous approval and the amendment of the plans submitted therewith; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received June 22, 2015'- five (5) sheets; and *on further condition*:

THAT the revised building conditions include: a maximum of 3,106.29 sq. ft. of floor area (3.94 FAR) and a maximum building height of 51'-0";

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the approved plans will 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."

(DOB Application No. 103299048)

A true copy of resolution adopted by the Board of Standards and Appeals, June 23, 2015.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

