

151-05-BZ**CEQR #05-BSA-140M**

APPLICANT – The Law Office of Frederick A. Becker for 100 Varick Street, LLC, Owner.

SUBJECT – Application June 16, 2005 – Zoning Variance (use) pursuant to Z.R. §72-21 to allow a proposed ten (10) story residential building containing seventy-nine (79) dwelling units located in an M1-6 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 100 Varick Street, located on the easterly side of Varick Street between Watts and Broome Streets, Block 477, Lots 35 and 42, Borough of Manhattan.

COMMUNITY BOARD #2M**APPEARANCES –**

For Applicant: Fredrick A. Becker, Charles Fridman, John Sole and Doris Diether of Community Board #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 20, 2005, acting on Department of Buildings Application No. 103625436, reads, in pertinent part:

“Proposed residential use is contrary to ZR 42-00 in M1-6 zoning district”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-6 zoning district, an eight-story plus cellar residential building, which is contrary to ZR § 42-00; and

WHEREAS, the bulk parameters of the proposed building are as follows: a total residential floor area of 52,648 sq. ft., a total residential Floor Area Ratio (FAR) of 7.97, 78'-9" total building height (with bulkheads), 61 residential units, and 100 percent lot coverage; no parking spaces will be provided; and

WHEREAS, additionally, no setback will be provided, which is acceptable to both this Board and Community Board 2, Manhattan; the Community Board recommends approval of the application on condition that the FAR of the proposed building be limited to 8.0; and

WHEREAS, initially, however, the applicant proposed a 10 FAR, ten-story, 109 ft. high building, with 79 dwelling units; and

WHEREAS, for reasons discussed below, the Board did not find that a FAR of 10.0 was justified, and required the applicant to reduce the FAR to a level consonant with the degree of financial hardship present at the site; and

WHEREAS, as a threshold issue, the Board notes that the site is burdened by an Height Restriction Agreement, dated September 3, 1981 (the “Agreement”), that benefits the property located at 125 Varick Street (as well as another nearby property); and

WHEREAS, this Agreement requires that any new development on the site be limited to eighty feet above

the level of the sidewalk of Varick Street; this height limit encompasses bulkheads and penthouses; and

WHEREAS, a representative of 125 Varick Street appeared at hearing and argued that the Board could not hear the application since it proposed a building form that would violate the Agreement; and

WHEREAS, the applicant represents that the owner of the subject premises is in the process of negotiating the termination of the Agreement with the owner of 125 Varick Street, but that this has not occurred yet; and

WHEREAS, accordingly, in order to comply with the requirements of the Agreement, the Board required that a building no higher than 80 ft. from the sidewalk be proposed; and

WHEREAS, since the proposed building will have a maximum total height of 78'-9" (including bulkhead), the Agreement is not violated; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in the *City Record*, with a continued hearing on June 6, 2006, and then to decision on July 11, 2006; 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 Commissioner Collins; and

WHEREAS, the subject premises is located on the east side of Varick Street between Watt and Broome Streets, across the street from the Hudson Tunnel entry plaza, and is comprised of two separate tax lots, Lots 35 and 42; the total lot area of the zoning lot is 6,598 sq. ft.; and

WHEREAS, Lot 35 has 4,540 sq. ft. of lot area, and is slightly irregular in shape, with a depth ranging from 35'-0" at its south lot line to 56'-2" at its north lot line; and

WHEREAS, Lot 42 has 2,058 sq. ft. of lot area, and is rectangular; and

WHEREAS, the site is currently occupied by two separate three-story buildings (formerly, the buildings were connected), with a total floor area of 19,794 sq. ft. and an FAR of 3.0; the buildings are proposed to be demolished; and

WHEREAS, the applicant states that the buildings were previously used for offices, but had been only 50 percent occupied or vacant since 1999, when the current owner took possession, until late 2001; and

WHEREAS, in 2001, the Red Cross leased the buildings for a five year term, but terminated the lease early in 2003; the applicant states that the buildings have largely been vacant since then, and that marketing of the buildings has not resulted in any new lessees aside from a temporary tenant on the ground floor; and

WHEREAS, accordingly, the owner now applies to the Board for a use variance, which would permit the construction of the proposed residential building; 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 size of

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the site is sub-standard in terms of lot area; (2) the site is in an area with many other more viable commercial and manufacturing buildings; and (3) the existing buildings are obsolete for office or industrial, in that floor plates are narrow and the central elevator core minimized productive use of the floors; and

WHEREAS, the Board does not view the second or third cited factors to be actual bases of uniqueness; and

WHEREAS, specifically, the Board does not recognize proximity to arguably better conforming buildings as a unique physical condition, especially where, as here, the applicant has not supported this argument with proof or engaged in any substantial analysis of it; and

WHEREAS, further, as noted above, the existing buildings are proposed to be demolished; thus, any obsolescence argument is rendered moot since the developer will then have an empty, developable site; and

WHEREAS, however, the Board does view the small size of the site, and its shallow depth, as legitimate unique physical conditions; and

WHEREAS, specifically, the Board notes that these two features lead to a floor plate with a maximum usable depth of approximately 35 ft., which is inefficient and unattractive to modern office or manufacturing users, and would thus realize a minimal rent; and

WHEREAS, the applicant also notes that a commercial building would need a central core and hallways running the length of the building, which would use approximately 25 percent of the floor plates; and

WHEREAS, based upon its review of the submitted radius diagram and its site and neighborhood inspection, the Board observes that the site's size and depth is relatively unique within the area and the subject M1-6 zoning district; and

WHEREAS, specifically, the Board observes that while there are smaller lots in the area, these lots are regularly shaped and are typically occupied by lawful non-conforming dwellings, garages, or community facilities; and

WHEREAS, the Board also observes that the site is the shallowest of its size in the area; and

WHEREAS, based upon the above, the Board finds that one of the aforementioned unique physical conditions – namely, the small size and shallowness of the lot – creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following conforming scenarios: (1) the existing commercial and office buildings; (2) a 10.0 FAR complying and conforming commercial office building, with a retail component; and

WHEREAS, the applicant concluded that neither scenario would realize a reasonable return; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study, and identified them at hearing; and

WHEREAS, specifically, the Board questioned: (1)

the stated land valuation; (2) the claimed overall operating costs related to the residential proposal (discussed in more detail below); and

WHEREAS, as to the land valuation, the Board initially expressed concern that it was too high, given the contours of the site and the compromised floor plates of the existing buildings; and

WHEREAS, further, the Board noted that the Agreement limited the height of any building, such that the 10.0 FAR commercial building could not be constructed; the Board asked for a refined land valuation that took this limitation into account; and

WHEREAS, in response, the applicant submitted a valuation that was reduced by 20 percent and which was based on a complying commercial structure with an FAR of 8.0; and

WHEREAS, the Board continued to question the validity of the valuation, noting that the Agreement had a more significant effect on the amount of commercial FAR that could be developed on the site, which would be reflected in the valuation; the Board again requested that the applicant provide a revised valuation; and

WHEREAS, in response, the applicant revised the land valuation to reflect a 7.0 FAR complying and conforming building, and used a formula of 7.0 FAR times the original land cost per square foot to arrive at this valuation; the applicant concludes that the 7.0 FAR scenario does not realize a reasonable return; and

WHEREAS, the Board has reviewed this revised valuation and the supporting analysis and finds it acceptable; and

WHEREAS, based upon its review of the subsequent submissions 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 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 states that the immediate area surrounding the site contains significant residential use, notwithstanding the manufacturing zoning classification; and

WHEREAS, the applicant specifically cites to lots on the subject block occupied by dwellings, as well as residential uses on Blocks 491 and 578, located to the north and west of the site; and

WHEREAS, the applicant also notes that there is a ten-story multiple dwelling fronting on Varick Street on Block 477, immediately to the south of the site; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of this map and upon its site and neighborhood inspection, the Board agrees that the area is best characterized as mixed-use,

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and that the proposed residential use is compatible with the character of the community; and

WHEREAS, the Board also finds that the proposed amount of residential FAR (7.97) and the amount of units (61) will not have a negative effect on the character of the community or adjacent properties; and

WHEREAS, further, the Board notes that the proposed height of the building (78'-9") respects the Agreement, and is compatible with the context of the surrounding area, as illustrated by a streetscape drawing submitted by the applicant; and

WHEREAS, the Board also notes that if the Agreement was not in place, a 100 ft. high building with no more than the approved FAR (7.97) would also be compatible with the context of the surrounding area; and

WHEREAS, at hearing, the Board expressed concern about: (1) the density and the proposed size of the residential units; (2) the roof configuration and compliance with the need for a bulkhead for the stair case; and

WHEREAS, as to density and unit size, the Board seeks to ensure that the proposed building complies in each respect to a Quality Housing-type residential building that would be developed in a residential district that allows a comparable amount of FAR, such as an R9A zoning district, which allows an FAR of 7.5; and

WHEREAS, specifically, the Board asked if each proposed unit was a minimum of 400 sq. ft., as required by ZR § 28-21; and

WHEREAS, in response, the applicant's architect confirmed that the proposed dwelling units will comply with the minimum unit size parameters in effect in a residential district that allows a comparable amount of FAR; and

WHEREAS, the Board also observes that the proposed amount of units complies with the density requirements of an R9A district; and

WHEREAS, finally, the Board notes that a condition will be placed on this grant requiring compliance with Multiple Dwelling Law requirements concerning provision of light and air; and

WHEREAS, as to the roof configuration, the Board noted that the single staircase core of the proposed building requires a bulkhead, and that the proposal did not reflect a covered bulkhead for roof access; and

WHEREAS, in response, the applicant noted that the roof of the building will be sufficiently sloped that roof access is not required, so no separate covered staircase bulkhead is required, as per Building Code § 27-375; 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

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

WHEREAS, as noted above, the applicant originally

proposed a ten-story, 10.0 FAR building with 79 units; and

WHEREAS, the Board expressed its dissatisfaction with this proposal at the first hearing, given that it reflected a degree of relief not consonant with the amount of hardship on the site; the Board was also concerned that the proposed FAR was too significant for the area, given that the nearest residential district was recently rezoned to a C6-2A zoning district, which allows a residential FAR of 6.02; and

WHEREAS, the Board also noted the site valuation and operating costs problems in the initial feasibility study, as discussed above; and

WHEREAS, as to the operating costs for the proposed residential building, the Board stated that they appeared to be excessive for the amount of residential units proposed; and

WHEREAS, in response, the applicant reduced the operating costs in its subsequent analyses of variance proposals; and

WHEREAS, specifically, the lower operating cost was reflected in a 6.0 residential FAR scheme and an 8.0 FAR residential scheme, both with a height of approximately 100 ft., that the applicant submitted after the first hearing at the request of the Board; and

WHEREAS, the applicant concluded that the 6.0 scheme did not provide a reasonable return, but that the 8.0 FAR scheme did; and

WHEREAS, as noted above, the Board recognized that the 8.0 scheme was compatible with the context of the neighborhood in terms of its height; and

WHEREAS, however, this scheme proposed a building height that did not fit within the bulk form dictated by the Agreement; and

WHEREAS, additionally, both analyses suffered from the site valuation problem noted above, and the Board did not accept them for this reason; and

WHEREAS, subsequently, the applicant submitted a feasibility analysis for a 7.97 FAR residential scenario that reflected an appropriate site valuation and complied with the Agreement in terms of height; and

WHEREAS, the applicant concluded that the 7.97 FAR scenario would realize a reasonable return; and

WHEREAS, the Board has reviewed the last analysis and agrees that the 7.97 FAR scenario represents the degree of relief necessary to overcome the site's inherent hardship; 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 an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) 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. 05BSA140M, dated April 11, 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.

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, on a site within an M1-6 zoning district, an eight-story, 78'-9" high, 7.97 FAR residential building, with 61 dwelling units and accessory residential use in the cellar, which is contrary to ZR § 42-00, *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 August 7, 2006"–eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a total residential floor area of 52,648 sq. ft., a total residential FAR of 7.97, eight stories plus a cellar, 78'-9" total building height (with bulkheads), 61 residential units, no setback, and 100 percent lot coverage, all as illustrated on the BSA-approved plans;

THAT all units shall have at least 400 sq. ft. of floor area;

THAT all residential units shall comply with all Multiple Dwelling Law requirements as to provision of light and air;

THAT the fresh air intakes not be placed on the Varick Street side of the building;

THAT the all dwelling units contain double glazed

**A true copy of resolution adopted by the Board of Standards and Appeals, August 8, 2006.
Printed in Bulletin Nos. 31-32, Vol. 91.**

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

windows with good sealing properties, and air conditioning, to provide 35-dBA noise attenuation in order to ensure an acceptable interior noise environment of 45-dBA;

THAT a construction protection plan approved by the Landmarks Preservation Commission must be submitted to the Department of Buildings before the issuance of any building permit;

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

Adopted by the Board of Standards and Appeals, August 8, 2006.