

182-04-BZ

CEQR#04-BSA-187M

APPLICANT - Howard A. Zipser/Stadtmauer Bailkin, for Chelsea/Village Associates, for Harmic III, LLC, lessee.

SUBJECT - Application April 29, 2004 - under Z.R. §72-21 to permit proposed eating and drinking establishment (comedy theater), Use Group 12, on a zoning lot, split between a C6-2A and R8B zoning district, of which a portion is located in the R8B district, is contrary to Z.R. §22-10.

PREMISES AFFECTED - 351/53 West 14th Street, north side, between Eighth and Ninth Avenues, Block 738, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES -

For Administration: John Yacavone, Fire Department.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO REOPEN HEARING -

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

Negative:.....0

THE VOTE TO CLOSE HEARING -

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

Negative:.....0

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 March 21, 2004, acting on Department of Buildings Application No. 103733925, reads:

"Proposed use group twelve is not permitted as-of-right in portion of zoning lot located in R8B Zoning District. This is contrary to section 22-10 ZR."; and

WHEREAS, a public hearing was held on this application on August 17, 2004 after due notice by publication in the City Record, and then to September 21, 2004 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, Manhattan Community Board 4 recommends approval of this application, with certain conditions agreed to by the applicant and incorporated herein; and

WHEREAS, this is an application under Z.R. §72-21 to permit, on a zoning lot split between C6-2A and R8B zoning districts, and partially within the Gansevoort Market Historic District, an eating

and drinking establishment (comedy theater), Use Group 12, on the ground floor of an existing building, in the portion of said building which is within the R8B zoning district, contrary to Z.R. §22-10; and

WHEREAS, the subject zoning lot is a through lot located on the north side of West 14th Street and the south side of West 15th Street, between 8th and 9th Avenues, with a depth of approximately 206.6 feet and frontages of 50 feet along each street; and

WHEREAS, the zoning lot is currently improved with two residential buildings, with addresses of 362/64 West 15th Street and 351/53 West 14th Street (the "subject building"); and

WHEREAS, the record indicates that the subject building has four stories and contains residential use on the upper stories and a ground floor commercial space 150 feet deep, with 103.25 feet (69%) located in the C6-2A district and the remaining 46.75 feet (31%) located in the R8B district; and

WHEREAS, the upper stories are 50' wide and only 47' 7 1/2" deep, and contain a total of 24 apartments; and

WHEREAS, the subject application seeks a use variance for part of the ground floor commercial space of the subject building; and

WHEREAS, the ground floor space is approximately 7,915 sq. ft. in size, and includes a 415 sq. ft. mezzanine level; and

WHEREAS, the comedy theater proposal contemplates the addition of 1,345 sq. ft. to the mezzanine level, though the applicant states that this addition is as-of-right; and

WHEREAS, the applicant represents that the following are unique physical conditions which create practical difficulties and unnecessary hardship in complying with underlying district regulations: (1) the narrow width and extended depth of the ground floor; (2) the split zoning designation, which prohibits Use Group 12 uses only within the rear 47 feet of the building; and (3) the history of development of the zoning lot; and

WHEREAS, the applicant states that the ground floor space is unusually deep in relation to its 50 foot width and cannot be efficiently used for its intended retail purpose; and

WHEREAS, evidence in the record indicates that the subject zoning lot and the surrounding area was formerly zoned C6, and then rezoned in 1999 to its current C6-2A/R8B designation, and that the requested variance would merely permit the rear 47 feet of the 150 foot deep ground floor, which is within the R8B district, to be returned to a previously permitted Use Group 12 use; and

WHEREAS, the Board notes that a Use Group 6 use could occupy the entirety of the ground floor space as-of-right; and

WHEREAS, based upon the above, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical

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difficulties and unnecessary hardship in developing the site in strict compliance with current zoning; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the entire premises with a conforming use would not yield the owner a reasonable return; and

WHEREAS, the applicant represents that the building owner's attempts to solicit as-of-right tenants for the ground floor commercial space were unsuccessful; and

WHEREAS, the record indicates that the space was previously used as a slaughterhouse and, more recently, occupied by a supermarket; and

WHEREAS, the applicant states that the supermarket failed due to the narrow configuration of the ground floor space and the lack of commercial storage space in the cellar and elsewhere in the building; and

WHEREAS, the applicant further states that the ground floor is unattractive to retail uses because of a lack of a rear loading berth, which is not possible to install due to the building located on the West 15th Street side of the zoning lot; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development of the rear 47 feet of the subject building in strict conformity with zoning will provide a reasonable return; and

WHEREAS, the applicant maintains that the proposed comedy theater will be located in a mixed-use area, characterized by numerous commercial businesses, retail stores, eating and drinking establishments and residential uses; and

WHEREAS, the applicant will provide sound attenuation measures, such as a second, suspended ceiling and double doors, to minimize sound transfer to the residential uses above and near the proposed establishment; and

WHEREAS, the applicant agrees that the rear egress of the premises, which exits into the residential courtyard between the two buildings on the zoning lot, shall only be used in case of emergency, and will be guarded while patrons are in the comedy theater; and

WHEREAS, based on the above, the Board finds that the subject application, if granted, will not alter the essential character of the surrounding neighborhood or impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

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

WHEREAS, this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an Type I action pursuant to 6NYCRR, Part 617.4 because the subject premises is partially within a designated historic district; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in an Environmental Assessment Statement (EAS) CEQR No. 04-BSA-187M dated April 8, 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, additional environmental studies were conducted and submitted for Board review on the following categories: traffic and parking, and hazardous materials assessment; and

WHEREAS, the Board, based upon its review of the additional studies, determined that there would not be any environmental impacts in these categories; 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.

Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and 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 Z.R. §72-21, to permit, on a zoning lot split between C6-2A and R8B zoning districts, and partially within the Gansevoort Market Historic District, an eating and drinking establishment (comedy theater), Use Group 12, on the ground floor of an existing building, in the portion of said building which is within the R8B zoning district, contrary to Z.R. §22-10; on condition that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received April 29, 2004" - (1) sheet and "September 23, 2004" - (1) sheet; and on further condition:

THAT the term of this variance shall be limited to fifteen (15) years from the date of this resolution, to expire on September 21, 2019;

THAT there shall be no change in use of the space to be occupied by the comedy theater to

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another use not permitted as-of-right without prior BSA approval;

THAT the applicant shall install sound attenuation measures, including double doors and a second, suspended ceiling, as shown on BSA-approved plans, prior to obtaining a certificate of occupancy;

THAT the residential courtyard between the two buildings, which is at the rear egress point of the subject premises, shall be: (1) used only in case of emergency for egress, and not for commercial use of any type or as a patron waiting area or employee break area, (2) appropriately designated as an emergency exit with signs, (3) fully alarmed, and, (4) during times when patrons are in the comedy theater, guarded by a staff member;

THAT all applicable fire safety measures, including those shown on the BSA-approved plans, shall be complied with;

THAT any and all kitchen/cooking area exhaust vents shall be located in such a way that, to the maximum extent possible, exhaust shall be vented away from any adjacent residential use;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all exiting requirements, including from the cellar area, shall be as reviewed and approved by the Department of Buildings;

THAT substantial construction be completed and a Certificate of Occupancy be obtained 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; 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, September 21, 2004.

**A true copy of resolution adopted by the Board of Standards and Appeals, September 21, 2004.
Printed in Bulletin No. 39, Vol. 89.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.