

**190-08-BZ**

APPLICANT – Valerie Campbell, Esquire c/o Kramer Levin Naftalis & Frankel, for 41-43 Bond Street LLC, owner.

SUBJECT – Application July 14, 2008 – Variance (§72-21) to allow a nine (9) story residential building (UG 2) containing eight (8) dwelling units; contrary to use regulations (§42-10). M1-5B district.

PREMISES AFFECTED – 41-43 Bond Street, south side of Bond Street, between Lafayette Street and Bowery, Block 529, Lots 29 & 30, Borough of Manhattan.

**COMMUNITY BOARD #2M****APPEARANCES –**

For Applicant: Sheila Pozon.

**ACTION OF THE BOARD –** Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 25, 2008, acting on Department of Buildings Application No. 110009188, reads in pertinent part:

“Proposed Use Group 2 (residential) use in an M1-5B District is contrary to ZR 42-10.

There are no bulk regulations for Use Group 2 buildings in M1-5B districts;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the NoHo Historic District Extension, an eight-story and penthouse residential building with eight dwelling units, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in the *City Record*, with a continued hearing on November 25, 2008, and then to decision on January 13, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown; and

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

WHEREAS, City Council Member Alan J. Gerson provided written testimony recommending approval of this application; and

WHEREAS, the subject premises is located on the south side of Bond Street between Lafayette Street and the Bowery, and has 4,274 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5B zoning district within the NoHo Historic District Extension; and

WHEREAS, the site is currently vacant, but was formerly occupied by two four-story buildings; and

WHEREAS, the applicant proposes an eight-unit residential building with a floor area of 23,621 sq. ft. (5.0 FAR), a street wall height of 95'-0", a total building height of 117'-0", and a rear yard of 30'-0"; and

WHEREAS, as to the proposed building: (1) the cellar level will be occupied by accessory storage and mechanicals, (2) the first floor will be occupied by the building lobby and one apartment unit, (3) the second floor through eighth floor will each be occupied by individual floor-through residential units, for a total of eight residential units; and (4) the roof level will be occupied by mechanicals and a one-story penthouse; and

WHEREAS, further, the proposed building will provide a 7'-6" setback above the seventh floor on the Bond Street frontage at a height of 95'-0"; 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; and (2) the site has a shallow depth; and

WHEREAS, the applicant states that the site has a frontage of 49'-10 1/2" and an irregular depth of between 89'-7" and 99'-5", for a total lot area of 4,725 sq. ft.; and

WHEREAS, the applicant represents that the small size of the site and its irregular depth would not accommodate efficient floor plates for a conforming commercial office development at the site; and

WHEREAS, the applicant represents that the small size of the lot results in an inefficient floor plate, in which a disproportionate share is devoted to the building core (elevators, stairways, and bathrooms); and

WHEREAS, the applicant represents that the consequential floor plate can accommodate no more than three marketable offices on each side of the core, yielding a total of six offices on each of the second through sixth floors of a complying building; and

WHEREAS, the applicant represents that this condition, in conjunction with the 20-foot setback requirement, further yields a total of three offices on each of the seventh through ninth floors, for a total of 39 offices in the conforming commercial building; and

WHEREAS, the applicant also states that the small and irregular lot size similarly constrains the design of a conforming hotel and limits the ability to offer the amenities and number of rooms necessary to provide a reasonable rate of return; and

WHEREAS, the applicant represents that the small footprint of the site precludes the use of the ground floor for eating and drinking facilities characteristic of a typical hotel, as the reception, lobby and other hotel functions would occupy virtually all the ground floor area; and

WHEREAS, as to the uniqueness of the site, the applicant submitted an analysis of development within an area bounded by Broadway to the west, East 4<sup>th</sup> Street to the north, Bleecker Street to the south and the Bowery to the east, within the M1-5B zoning district (the “study area”); and

WHEREAS, of the approximately 100 lots within the study area, the analysis indicates that seven sites other than the subject site are not occupied by permanent structures; and

WHEREAS, the analysis further found six of the seven sites were commercially active or were undergoing development; three of the six sites were larger than the

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subject site, and three sites comparable in size to the subject site were located on Lafayette Street and the Bowery, major commercial thoroughfares; and

WHEREAS; of the approximately 100 sites within the study area, the Board notes that only one was found to be comparable to the subject site based on its size, location and lack of commercial use or permanent development; and

WHEREAS, the Board further notes that the incidence of one within a 100-building study area sharing the same "unique conditions" as the subject site would not, in and of itself, be sufficient to defeat a finding of uniqueness; and

WHEREAS, under New York law, a finding of uniqueness does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see *Douglaston Civ. Assn. v. Klein*, 51 N.Y.2d 963, 965 (1980)); 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 that analyzed: (1) a conforming nine-story office building; (2) a conforming nine-story hotel; and (3) the proposed eight-story and penthouse residential building; and

WHEREAS, the feasibility study indicated that neither a conforming office building nor a conforming hotel would result a reasonable return, while the proposed residential building would result in a reasonable return; and

WHEREAS, the Board notes that prior to their demolition, the site was occupied by two buildings; and

WHEREAS, the Board questioned why it was not feasible to preserve and enlarge the two buildings for use as Joint Living Work Quarters (JLWQ) for artists, which is a conforming use; and

WHEREAS, the applicant states that the buildings formerly located on the site were not suitable for JLWQ use due to their eight-foot ceiling heights and limited ambient light; and

WHEREAS, the applicant represents that the reuse of the former buildings for commercial or residential use was also infeasible because they contained only 12,008 sq. ft. of floor area and would require a costly gut rehabilitation and the installation of new mechanical and electrical systems; and

WHEREAS, at hearing, the Board questioned whether the residential sales prices used by the feasibility analysis accurately reflected the residential real estate market for the surrounding community; and

WHEREAS, the applicant stated that the planned finishes and construction of the proposed apartments would be less luxurious than those of many recently

constructed buildings and that the proposed apartments would consequently not command the premium sales prices generated by other buildings in the area; and

WHEREAS, a submission by the applicant identified five comparable buildings which yield an averaged sales price per square foot that is equivalent to the projected per foot sales price of the subject 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 states that the residential use is consistent with the character of the area and with new residential developments located across from the subject property at 40 and 48 Bond Street, respectively, and to its west, at 25 Bond Street and east, at 57 Bond Street; and

WHEREAS, the applicant further states that in the subject M1-5B zoning district, JWQ use is permitted as of right in buildings constructed prior to December 15, 1961 with a lot coverage of less than 5,000 sq. ft.; and

WHEREAS, the applicant notes that the building's height is within the parameters permitted for a conforming building in the subject M1-5B zoning district; and

WHEREAS, the applicant further states that the height and bulk are compatible with the area, noting that the proposed building is comparable in height to the buildings at 40 and 48 Bond Street, as well as to loft-style buildings west of Lafayette Street; and

WHEREAS, the Board notes that a streetscape submitted by the applicant demonstrates the compatibility of the design and height of the subject building with those on the north and south sides of Bond Street between Lafayette Street and the Bowery; and

WHEREAS, the proposed building is located within the NoHo Historic District Extension, and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") dated September 30, 2008, approving the proposed building; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's height, bulk and design are compatible with other buildings in the neighborhood; 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

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herein was not created by the owner or a predecessor in title, but is due to the unique dimensions of the lot; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

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

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; 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 6 NYCRR; 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. 09BSA009M, dated July 10, 2008; and

WHEREAS, the EAS documents show 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 (“DEP”) Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a July 2008 Environmental Assessment Statement, (2) an August 2008 Phase I Environmental Site Assessment (3) an October 2008 Phase II Workplan and Health and Safety Plan; and

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

WHEREAS, pursuant to a Restrictive Declaration executed on December 26, 2008 and recorded against the subject property on December 30, 2008, the applicant has agreed to implement any hazardous materials remediation required by a revised RAP; and

**A true copy of resolution adopted by the Board of Standards and Appeals, January 13, 2009.**

**Printed in Bulletin Nos. 1-3, Vol. 94.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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, in an M1-5B zoning district within the NoHo Historic District Extension, an eight-story and penthouse residential building with eight dwelling units, which is contrary to ZR § 42-10, *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 September 17, 2008”–(8) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: an eight-unit residential building with a floor area of 23,621 sq. ft. (5.0 FAR), a street wall height of 95'-0", a total building height of 117'-0", and a rear yard of 30'-0"; and

THAT all requirements as set forth in the Restrictive Declaration shall be fully complied with;

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;

THAT shall proceed in accordance with ZR § 72-23; 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, January 13, 2008.