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BOARD OF STANDARDS AND APPEALS

MEETING OF: May 6, 2024
CALENDAR NO.: 2023-69-A
PREMISES: 25 Water Street a/k/a 115 Broad Street,
Manhattan
Block 5, Lot 10

ACTION OF BOARD — Application granted on condition.

THE VOTE —
Affirmative: Chair Chanda, Vice-Chair Scibetta, Commissioner
Ottley-Brown, Commissioner Sheta, and Commissioner Yoon
.....5
Negative:.....0

THE RESOLUTION —

The decision of the Department of Buildings (“DOB”), dated October 17, 2023, acting on DOB Alteration-CO Application No. M08013214, reads, in pertinent part: “East-facing windows of proposed ZR Article 1, Chapter 5 conversion of office building constructed after 1961 to residential use do not comply with MDL § 277(7) ...”.

This is an application filed pursuant to The Board’s Rules of Practice and Procedures (the “Board’s Rules”) § 1-06.1(c) and the New York City Charter (“Charter”) § 666, in connection with the conversion of an existing commercial office building to residential use. Specifically, the applicant is seeking a waiver of New York State Multiple Dwelling Law (the “MDL”) § 277(7)(b)(i)(A), pursuant to MDL §§ 277 and 310, which will allow the applicant to satisfy light and air requirements along the subject building’s east-facing façade with windows that open onto Vietnam Veterans Memorial Plaza (the “Park”), a mapped New York City Park, rather than onto a street, court, or yard.

A public hearing was held on this application on March 25, 2024, after due notice by publication in *The City Record*, and then to decision on May 6, 2024. Chair Chanda and Commissioner Yoon performed inspections of the site and surrounding neighborhood.

I.

The Premises are located at the southeast intersection of Water Street and Broad Street, within a C5-5 zoning district, the Special Lower Manhattan District, and the Water Street Subdistrict, in Manhattan. With approximately 297 feet of frontage along Water Street, 67 feet of frontage along Broad Street, 198 feet of frontage along the Park, and

54,023 square feet of lot area, the Premises are occupied by an existing, 22-story, commercial office building.

II.

The Board has exercised jurisdiction over the Premises since April 4, 1967, when, under BSA Cal. No. 16-67-BZ, the Board granted a special permit, pursuant to Z.R. § 73-68, to permit, in a C5-5 zoning district, the erection of a 22-story, plus penthouse, bank and office building that penetrates the sky exposure plane, on condition that all work conform to the drawings filed with the application; all laws, rules, and regulations applicable be complied with; and a permit be obtained, work completed, and a certificate of occupancy obtained in accordance with Z.R. § 72-23.

By letter dated December 19, 2023, the Board issued a letter of no objection to permit the surrender of the previously-issued special permit at the subject Premises based on the applicant's representation that under the Special Lower Manhattan District regulations, the sky exposure plane, which necessitated the special permit, was no longer in effect, and, as such, a proposed residential conversion fully complies with the applicable height and setback regulations, pursuant to Z.R. § 91-32, on condition that the DOB ensure that any proposed changes or development on the Premises comply with all applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

III.

In line with the proposed, as-of-right, residential conversion of the subject building, the applicant plans that east-facing windows of the building would face onto the Park, rather than onto a street, court, or yard. Therefore, the applicant seeks a modification of this requirement because, it contends, the Park provides light and air in excess of what is required under the MDL. MDL § 277(7) states, in pertinent part:

Any building in any city of more than one million persons which `at any time prior to January 1, 1967 was occupied for loft, commercial, institutional, public, community facility or manufacturing purposes, may, notwithstanding any other article of this chapter, or any provision of law covering the same subject matter (except as otherwise required by the local zoning law or resolution), be occupied in whole or in part for joint living-work quarters for artists or general residential purposes if such occupancy is in compliance with this article. Such Occupancy shall be permitted only if the following conditions are met and complied with. ... (c) For multiple dwellings and buildings erected or to be erected or altered pursuant to plans filed on or after December 15, 1961 ... provisions relating to (1) Height and bulk; (2) Required open spaces; or (3) Minimum dimensions of yards and courts. Variations or modifications may be granted pursuant to Paragraph[] ... c only on condition that open areas for

light and air are provided which are at least equivalent in area to those required by the applicable provisions of this chapter.

Further, MDL §277(7)(b)(i)(A) requires that:

Every dwelling unit shall have one or more windows ... which open onto a street, a court with a dimension of 15 feet perpendicular to the windows and 100 square feet minimum area above a setback or a 30-foot rear yard.

Accordingly, the applicant appeals this requirement pursuant to Charter § 666(7) and MDL § 277(16) and 310.

IV.

The Board notes that it has authority, as set forth in Charter § 666(7), to vary or modify any rule or regulation or the provisions of any law relating to the construction, use, structural changes, equipment, alteration or removal of buildings or structures. The Board may grant a modification pursuant to Charter § 666(7), if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent permitted by the code and only in the manner provided for in it.

MDL §277(16) provides that “[t]he requirements and standards prescribed in this section shall be subject to variation in specific cases by the ... [Board of Standards and Appeals] and pursuant to the provisions of ... section 666 of the New York City Charter.” Whereas, MDL §277(16) references the legal standard incorporated in the New York City Charter - that where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law, modifications are permitted to the extent that the spirit of the law shall be observed, public safety secured and substantial justice done – MDL §310 incorporates the language that the BSA has the power to vary or modify regulations in the MDL which relate to light and air, i.e., required open spaces and minimum dimensions of yards and courts, “provided the spirit and intent of this chapter are maintained and public health, safety and welfare preserved and substantial justice done.

1.

First, the applicant represents that strict compliance with this provision of the MDL would impose practical difficulties or unnecessary hardship because without the requested relief the east-facing windows of the proposed units would be inoperable and, thereby, reduce the number of bedrooms in each of the subject units and impact ventilation throughout those units. The applicant points out that the MDL presents sufficient light and air as essential to the public welfare and depriving the tenants of the subject units to operable windows facing the Park would diminish their quality of life. Moreover, the applicant represents that marketing “home offices” as opposed to bedrooms would result in an economic loss in

the form of reduced rent and increased lease-up time. In support, the applicant provided a letter from a New York City realtor stating that the inability to rent the subject units as multiple-bedroom units would lower the economic return that the applicant would be able to earn from the proposed residential conversion, both because of increased lease-up time and lower rents.

2.

Next, the applicant represents that the spirit and intent of the MDL are maintained despite the requested modification because the Park provides light and air in excess of what is required under MDL § 277(7)(b)(i)(A). Here, the applicant argues that because MDL § 310(2)(c) is explicit as to how the spirit and the intent of the MDL is to be maintained in that it conditions a variation or waiver on the provision of open areas for light and air which are at least equivalent in area to those required by the applicable provisions of this chapter, MDL § 277(7)(b)(i)(A) can be varied or modified pursuant to either MDL §§ 277(16) or 310. The applicant claims that the requirement that the windows of the subject building face onto a street, court, or a yard can be varied or modified pursuant to §277(16) because it falls within the specific section of the law over which the Board has jurisdiction pursuant to that section, and it can be modified pursuant to MDL §310(2)(c)(3) because §277(7)(b)(i)(A) requires windows which open onto a street, a yard, or court with specified dimensions.

Specifically, the applicant posits that because the width of the park adjacent to the subject building varies, from 35.31 feet, at its narrowest point at the northeast corner of the building, to 89.44 feet, at the Building's southeast corner, and beyond the Park is a plaza at 55 Water Street with a depth of approximately 60 feet, such that, at its nearest point, the closest building to the east-facing windows of the subject units is well over 90 linear feet away. Thus, the applicant concludes that the subject units would benefit from more light and air than is required under the MDL, as the Park cannot be alienated or developed without State legislation and a Home Rule message from the New York City Council, followed by a demapping action subject to the Uniform Land Use Review Procedure ("ULURP") thereby guaranteeing abutting residents perpetual access to light and air, as per the legislative intent of MDL § 277.

Additionally, the applicant claims that the requested MDL waiver would not impact the building's exterior, the floor area, the bulk, the number of dwelling units, or the size and configuration of the east-facing windows.

3.

Finally, the applicant claims that, in this instant case, substantial justice is furthered by a modification of the MDL and refers to current New York City public policy in discussing the benefits to the public that

would arise proposed the residential conversion. Firstly, the applicant states that the proposed residential building could contain 1,320 dwelling units but notes that without the requested MDL modification, however, the units at issue would have fewer bedrooms and not be able to accommodate larger families. In support, the applicant reiterates the statements made in its realtor letter,

...larger bedroom count units are in high demand for families/individuals in New York City, particularly in lower Manhattan. The loss of the approximately 100 bedrooms in the proposed conversion of 25 Water Street creates a problem not only in the leasing of the units in the subject building, but also more broadly, New Yorkers will have fewer places to live throughout the City.

As such, the applicant concludes that allowing it to maximize the number of bedrooms in each of the converted dwelling units, and offset the costs of the conversion, furthers the City's stated goal of increasing housing and encouraging residential conversions through adaptive reuse of office buildings.

V.

At hearing, the Board raised concerns about the applicant's proposed plans which did not clearly delineate the units which were at issue in the requested MDL waiver, specifically on the east-facing portions of the 23rd and 24th floors. In response, the applicant submitted revised plans, with a table listing the units in the proposed building that are subject of the requested MDL waiver. Additionally, the applicant represented that upon consultation with the project architect, it confirmed that the east-facing units on the 23rd and 24th floors satisfy the MDL without the requested waiver and did not amend the illustrative plans.

VI.

By letter dated May 1, 2024, the New York City Fire Department ("FDNY"), Bureau of Fire Prevention states that it has reviewed the plans and applications filed with the BSA and in consultation with the Bureau of Operations, the FDNY has "No Objection" to the requested waiver or modification to the Multiple Dwelling Law. A review of DOB NOW and FDNY Building Information profiles shows that a fire suppression system (sprinkler/standpipe) and fire alarm is to be installed providing both passive and reactive systems at these Premises. Based upon the preceding, the Fire Department has no objection to the above-referenced application. The Bureau of Fire Prevention/Operations will continue to inspect these Premises and enforce all applicable rules and regulations.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 24BSA011M, dated May 6, 2024. 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; or public health.

By correspondence dated January 5, 2024, the New York City Landmarks Preservation Commission (“LPC”) states that the subject Premises have no architectural significance. Additionally, LPC designated and State/National Registers of Historic Places (“S/NR”) listed Fraunces Tavern, 54 Pearl Street, Fraunces Tavern Block Historic District; Stone Street Historic District, LPC designated Street plan of New Amsterdam and Colonial New York; S/NR listed Stone and Webster building, 90 Broad Street; Wall Street Historic District; Staten Island Ferry within radius. LPC designated Whitehall Ferry Terminal, adjacent to radius.

By correspondence dated April 20, 2024, the New York City Department of City Planning, Department of Climate and Sustainability Planning states that it has completed the review of the project as described below for consistency with the policies and intent of the New York City Waterfront Revitalization Program (“WRP”). Based on the information submitted, the Climate and Sustainability Planning Division, on behalf of the New York City Coastal Commission, having reviewed the waterfront aspect of this action, hereby concurs that the actions will not substantially hinder the achievement of any WRP policy. This determination is only applicable to the information received and the current proposal. Any additional information or project modifications would require an independent consistency review.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Based on the foregoing, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Based on the foregoing, the evidence in the record supports the findings required to be made under Charter § 666(7) and MDL §§ 277 (16) and 310, and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration 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 1997, as amended and make each and every one of the required findings under MDL §§ 277 (16) and 310 and NYC Charter § 666(7), to *permit* the as-or-right, residential conversion of the subject commercial office building with east-facing façade windows that open onto Vietnam Veterans Memorial Plaza, rather than onto a street, court, or yard; *on condition* that all work and site conditions shall

conform to drawings filed with this application marked: Board Approved: May 6, 2024 — Thirty (30) sheets; and *on further condition*:

THAT a composite window-wall attenuation of no less than 33 dba and alternate means of ventilation which may include central air conditioning shall be provided for the portion of the building affected by the MDL waiver;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2023-69-A"), shall be obtained within four years, by May 6, 2028;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

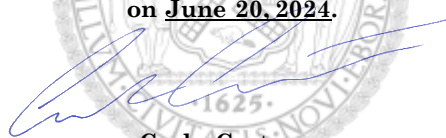
THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2024.

CERTIFICATION

**This copy of the resolution
dated May 6, 2024
is hereby filed by the
Board of Standards and Appeals
on June 20, 2024.**



**Carlo Costanza
Executive Director**