

263-99-A

APPLICANT - Fischbein Badillo Wagner Harding, for Lemberg Syndicate & Newbury Street Partners, owner.
SUBJECT - Application October 12, 1999 - An appeal challenging the Department of Buildings decision dated September 14, 1999, which denied a building permit for subject premises on the ground that a Use Group 6 is not permitted at the first story level of a building containing one story and mezzanine as per Z.R. §42-14(D).

PREMISES AFFECTED - 92 Prince Street a.k.a. 132/38 Mercer Street, southeast corner, Block 498, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES -

For Applicant: Barbara Hair.

ACTION OF THE BOARD - Appeal granted.

THE VOTE TO GRANT -

Affirmative: Chairman Chin, Vice-Chair Bonfilio, Commissioner Korbey and Commissioner Caliendo....4

Negative:0

THE RESOLUTION -

WHEREAS, the determination of the Manhattan Borough Commissioner of Buildings dated September 14, 1999, acting on N.B. application # 102564976, which reads:

"PROPOSED USE GROUP 6 IS NOT PERMITTED AT 1ST STORY OF A BUILDING CONTAINING ONE STORY AND MEZZANINE PER SECTION 42-14 (D) Z.R."; and

WHEREAS, the premises and the surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Vice Chair Paul Bonfilio, R.A., Commissioner Mitchell Korbey; and Commissioner Peter Caliendo; and

WHEREAS, the subject zoning lot is located within an M1-5B zoning district and has been occupied as a parking lot (Use Group 8) since 1965; and

WHEREAS, the appellant has proposed to erect a structure on the zoning lot with a total of approximately 2,521 square feet on the first level and a mezzanine measuring approximately 823 square feet; and

WHEREAS, the proposed structure would be occupied as a jewelry shop (Use Group 6); and

WHEREAS, this is an appeal of a decision of the

Department of Buildings which denied the issuance of a building permit for the erection of the aforementioned structure pursuant to Z.R. §42-14 (D)(2)(b); and

WHEREAS, Z.R. §42-14 (D)(2)(b) states, in pertinent part, that within M1-5B Districts, only uses listed in Use Groups 7, 9, 11, 16, 17A, 17B, 17C, or 17E shall be allowed below the floor level of the second story; and

WHEREAS, the Department of Buildings determined that the proposed structure consisted of two stories and hence, the proposed jewelry shop (Use Group 6) could not operate below the second story and as such it denied the application for a work permit to construct said structure; and

WHEREAS, on September 1, 1993 the then Commissioner of the Department of Buildings, Rudolph J. Rinaldi, issued a memo (the "Rinaldi memo") interpreting Z.R. §42-14 (D) (2); and

WHEREAS, the Rinaldi memo stated that M1-5B districts were mapped in areas where the City wanted to preserve buildings for industrial and manufacturing uses; and

WHEREAS, the Rinaldi memo also noted that various restrictions were placed by Article IV on ground floor use in the affected buildings; and

WHEREAS, the Rinaldi memo states and the Commissioner found that a reasonable interpretation of the law permitted the ground floor of a premises, located within an M1-5B zoning district, could be occupied by a Use Group 6 eating and drinking establishment as there would be no displacement of any existing industrial or manufacturing use in that case; and

WHEREAS, here the proposed structure would replace an existing parking lot operated since 1965 and would not result in the displacement of any existing industrial or manufacturing use; and

WHEREAS, the Board finds in the instant case that the proposed use would not conflict with the purposes of the underlying zoning as there are no existing manufacturing or industrial uses located on the subject zoning lot which will be displaced; and

Therefore, it is resolved that the decision of the Manhattan Borough Commissioner dated September 14, 1999 acting on N.B. Application # 102564976, is modified and the appeal is granted.

Adopted by the Board of Standards and Appeals, February 8, 2000.

A true copy of resolution adopted by the Board of Standards and Appeals, February 8, 2000.

Printed in Bulletin Nos. 7, Vol. 85.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

