

290-06-BZ

CEQR #07-BSA-034M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 386 LLC, owner; 11 Great Jones, LLC, lessee.

SUBJECT – Application November 1, 2006 – Variance under §72-21 to allow a six (6) story residential building containing ground floor retail and eight (8) dwelling units. The project site is located within an M1-5B district and is contrary to use regulations (§§42-00 and 42-14(d)(2)(b)).

PREMISES AFFECTED – 372 Lafayette Street, 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets, Sinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: James Power and Doris Diether, CB #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 19, 2006, acting on Department of Buildings Application No. 104520608, reads in pertinent part:

“Proposed Use Group 2 residential use (dwelling units) in a manufacturing district is contrary to ZR 42-10 and it is not permitted. There are no bulk and use regulations for UG 2 in a manufacturing district.

Proposed use Group 6 in manufacturing district M1-5B is contrary to ZR 42-142(2)(d) and it is not permitted in that only uses listed in Use Group 7, 9, 11, 16, 17A, 17B, 17C or 17E shall be allowed below the floor level of the 2nd story.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the NoHo Historic District, the construction of a six-story, eight-unit residential building with ground floor retail, which is contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on February 13, 2007, after due notice by publication in the *City Record*, and then to decision on April 17, 2007; 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 Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the application on condition that there be no signage on the building and that no bar or restaurant occupy the ground floor space; and

WHEREAS, the site is located on the west side of Lafayette Street, between Great Jones Street and Bond

Street, within an M1-5B zoning district; and

WHEREAS, the site has a lot area of 3,039.4 sq. ft.; and

WHEREAS, site is occupied by a one-story auto repair establishment that will be demolished; and

WHEREAS, the site has 26’-4” of frontage on the south side of Great Jones Street and 100’-7” of frontage on the west side of Lafayette Street; and

WHEREAS, the site has a width of 34’-6” along the southern lot line; a one-story gas station occupies the adjacent lot to the south; and

WHEREAS, the site has a trapezoidal shape, attributed in part to the widening and extension of the former Elm Street and Lafayette Place at Great Jones Street in the late 19th Century, as discussed below; and

WHEREAS, the proposed building will have a total floor area of 15,556.5 sq. ft. (5.12 FAR), a residential floor area of 14,026 sq. ft. (4.62 FAR), a commercial floor area of 1,530.5 sq. ft. (0.50 FAR), a height of 70’-10 ¾”, without bulkheads, and a total height of 79’-10 ¾”, with bulkheads; and

WHEREAS, the cellar level will be occupied by storage and accessory use; and

WHEREAS, the first floor will be occupied by retail use (UG 6) and a small residential entrance, located on the southern end of the Lafayette Street frontage; and

WHEREAS, the second through fourth floors will each be occupied by two residential units; and

WHEREAS, the fifth and sixth floors will each be occupied by two duplex units; and

WHEREAS, proposed building will rise without setback to a full height of 70’-10 ¾” along both Lafayette Street and Great Jones Street; and

WHEREAS, the building will be constructed with a pre-fabricated modular system based on cargo containers, stacked above a ground floor retail space of conventional steel frame construction; 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 irregularly-shaped; (2) the site is small; (3) the site is adjacent to the Lexington Avenue subway line; and (4) the historic use of the site as a gasoline service station and automotive repair shop has resulted in soil contamination; and

WHEREAS, as to the site’s shape, the applicant states that it is trapezoidal with a depth ranging from 26’-2” to 34’-6” from Lafayette Street and 100’-6” from Great Jones Street; and

WHEREAS, as mentioned above, the shape of the site is partly attributed to the creation of Lafayette Street between East Houston Street and Great Jones Street in the 1890s, which replaced the former Elm Street and Lafayette Place and claimed an irregularly-shaped sliver of the historic lot; and

WHEREAS, because of the site’s long and narrow shape and the large amount of street frontage, there is a high ratio of exterior walls to usable interior; and

WHEREAS, the applicant documented additional construction costs associated with the need for such a

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high proportion of exterior walls; and

WHEREAS, as to size, the applicant represents that the site is small, which results in a high loss factor as a disproportionate share of each floor would be devoted to the building core; and

WHEREAS, the applicant represents that the small size of the site and its irregular configuration would not provide efficient floorplates for a conforming hotel or office development at the site; and

WHEREAS, as to the adjacency to the subway, the applicant represents that the Lexington Avenue subway line is approximately 20 feet deep and located within between 12 and 19 feet of the site along Lafayette Street; and

WHEREAS, accordingly, the applicant states that the New York City Transit Authority (NYCTA) has requirements for the design and construction of a temporary excavation support system at this location; and

WHEREAS, specifically, the requirements include that piles must be drilled rather than driven and that the excavation support system must be laterally braced in accordance with NYCTA design and performance guidelines; and

WHEREAS, additionally, the applicant represents that the NYCTA requires monitoring of the tunnel structure during foundation construction; and

WHEREAS, the applicant submitted an engineer's report in support of these assertions, which document the anticipated expenses of the noted supplemental measures; and

WHEREAS, further, the applicant notes that since such a large portion of the site has frontage on Lafayette Street, a large portion of the site is affected by the subway conditions; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram, which reflects that of the 40 lots within the radius with subway frontage, only two have a higher ratio of subway frontage to lot area; and

WHEREAS, as to the subsurface conditions, the applicant represents that removal and disposal of at least two or three underground storage tanks will be required; and

WHEREAS, additionally, the applicant represents that at least 40 percent of the soil volume to be excavated is expected to be regulated non-hazardous waste, which must be disposed of in a landfill; and

WHEREAS, the applicant documented the additional costs associated with the clean up of the site due to its historic use as a gasoline service station and an automotive repair facility; 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 analyzing an as of right commercial building and an as of right hotel building; and

WHEREAS, the applicant concluded that such scenarios would result in a loss, due to the size of the lot, as well as premium construction costs associated with the irregular site conditions; 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 represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, the applicant states that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; 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, the Board agrees that the character of the area is mixed-use, and finds that the introduction of eight dwelling units and ground floor retail will not impact nearby conforming uses; and

WHEREAS, the applicant represents that the NoHo Historic District and the surrounding area are characterized by 19th Century retail and loft buildings, many of which are cast iron, and early 20th Century commercial buildings; and

WHEREAS, accordingly, the color, texture, and details of the proposed building were designed to be compatible with the context for cast iron facades and to emphasize the industrial quality of cargo containers in keeping with the industrial loft quality of the neighborhood; and

WHEREAS, the applicant represents that the building heights in the surrounding area range from four to eight stories and the adjacent property to the west is occupied by a six-story mixed-use building; and

WHEREAS, the applicant notes that since the adjacent property to the south is occupied by a one-story building, the proposed building will be clearly visible along Bond Street and the Landmarks Preservation Commission (LPC) requires that the exterior of that portion of the building also be designed to be compatible with the context of the neighborhood; and

WHEREAS, additionally, the applicant agreed to create a screen wall around the outdoor terrace space on the fifth and sixth floors in order to provide an uninterrupted street wall on Lafayette Street and Great Jones Street; and

WHEREAS, the applicant received a Certificate of Appropriateness from the LPC, dated March 23, 2007; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the

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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, but is due in part to the historic widening of the street; and

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

WHEREAS, the applicant states that the standard residential and commercial floor area in the building results in a total FAR of 5.0, but because the terrace on the fifth floor is partially enclosed in order to maintain the street wall, it counts as an additional 363 sq ft. of floor area and results in the proposed FAR of 5.12; and

WHEREAS, the Board notes that the proposed FAR is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site; 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 a Type I action pursuant to 6 NYCRR, Part 617.4; 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. 07BSA034M, dated November 1, 2006; 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's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a November, 2006 Environmental Assessment Statement, (2) a October, 2005 Phase I Environmental Site Assessment and (3) a December 2005 Limited Phase II Environmental Site; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous

materials impacts; and

WHEREAS, a Restrictive Declaration was executed on March 8, 2007 and submitted for recordation on March 12, 2007 for the subject property to address hazardous materials concerns; 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; 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, within an M1-5B zoning district within the NoHo Historic District, the construction of a six-story, eight-unit residential building with ground floor retail, which is contrary to ZR §§ 42-10 and 42-14, *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 November 1, 2006"—four (4) sheets and "Received March 6, 2007"—seven (7) sheets; and *on further condition*: THAT the following shall be the bulk parameters of the proposed building: six stories, a total floor area of 15,556.5 sq. ft. (5.12 FAR), a residential floor area of 14,026 sq. ft. (4.62 FAR), a commercial floor area of 1,530.5 sq. ft. (0.50 FAR), a height of 70'-10 ¾", without bulkheads, and a total height of 79'-10 ¾", with bulkheads;

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 this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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, April 17, 2007.

A true copy of resolution adopted by the Board of Standards and Appeals, April 17, 2007.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.