

292-01-BZ

CEQR #02-BSA-036M

APPLICANT - Anthony M. Salvati, for Peter Mosconi, owner.

SUBJECT - Application October 18, 2001 - under Z.R. §72-21, to permit in an R7-2 zoning district, the legalization of a new dining room at the rear of an eating and drinking establishment, with accessory cellar level storage, which is contrary to Z.R. §52-22.

PREMISES AFFECTED - 69/71 MacDougal Street, north side, 120-3 1/2" of West Houston Street, Block 526, Lots 33 and 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES -

For Applicant: Peter Hirshman and Peter Mosconi.

For Opposition: Doris Diether, Community Board #2.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chairman Chin, Commissioner Korbey, Commissioner Caliendo and Commissioner Miele...4

Negative:.....0

Absent: Vice-Chair Babbar.....1

THE RESOLUTION-

WHEREAS, the decision of the Borough Commissioner, dated October 4, 2001 acting on Application No. 102321952 reads:

- “1. The proposed enlargement of the non-conforming Use Group 6 Eating and Drinking Establishment in an R7-2 zoning district is contrary to Section 52-22 Z.R.”; and

WHEREAS, a public hearing was held on this application on October 1, 2002 after due notice by publication in the *City Record*, and laid over to December 17, 2002 and then to January 14, 2003 for decision; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Vice-Chair Satish Babbar, Commissioner Peter Caliendo and Commissioner Mitchell Korbey; and

WHEREAS, this is an application under Z.R. §72-21, to permit, in an R7-2 zoning district, the legalization of a new dining room at the rear of an eating and drinking establishment, with accessory cellar level storage, which is contrary to Z.R. §52-22; and

WHEREAS, the subject site consists of two contiguous lots each with 20' of frontage along MacDougal Street totaling 40' in length, improved with an existing non-conforming 3,817 square foot restaurant at the basement and cellar levels with three-stories of residential above; and

WHEREAS, the subject R7-2 zoning district only permits residential and community facility uses; and

WHEREAS, the record indicates that the lot has been developed with two independent structures that have been linked together with an existing rear

yard extension; and

WHEREAS, the applicant represents that due to the sitting and configuration of the buildings only a small portion of the site on the southwestern edge is available for development; and

WHEREAS, the site was developed in the 1920s, prior to Certificates of Occupancy being required; and

WHEREAS, the applicant represents that a viable conforming development is not possible because the two existing contiguous structures with the existence of an open courtyard is a condition does not allow enlargement that conforms to the zoning resolution

WHEREAS, therefore, the Board finds that the aforementioned unique physical conditions, the site's history with a non-conforming eating and drinking establishment use, and site's development configuration with two independent structures linked together with an existing rear extension presents an undue hardship in developing the site with a conforming development; and

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

WHEREAS, the Board notes that this is a legalization, and that the area surrounding the subject application, is characterized by commercial and other eating and drinking establishments; and

WHEREAS, therefore, the Board finds that the continuation of an eating and drinking establishment use at the subject premises 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 hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, 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 §72-21 of the Zoning Resolution; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required

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findings under Z.R. §72-21, to permit, in an R7-2 zoning district, the legalization of a new dining room at the rear of an eating and drinking establishment, with accessory cellar level storage, which is contrary to Z.R. §52-22, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2002"-(1) sheet and "October 18, 2001"-(5) sheets; and on further condition;

THAT the term of the variance shall be limited to ten (10) years from the date of this grant expiring January 7, 2013;

THAT pursuant to Fire Department recommendations, sprinklers shall be provided and maintained in all commercial spaces;

THAT a new Certificate of Occupancy shall be obtained within one year of this grant;

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

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, January 7, 2003.

**A true copy of resolution adopted by the Board of Standards and Appeals, January 14, 2003.
Printed in Bulletin No. 4, Vol. 88.**

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**