

301-01-BZ

CEQR# 02-BSA-040M

APPLICANT - Stadtmauer Bailkin, LLP, by Howard A. Zipser, for 231 Centre Street Associates and 23 Great Jones Street, LLC, owners; 119 Seventh Avenue Cafeteria, LLC, lessee.

SUBJECT - Application October 30, 2001 - under Z.R. §72-21, to permit the proposed eating and drinking establishment, Use Group 6A, in excess of 5,000 square feet, to be partially located below the floor level of the second story, of a building to be constructed in an M1-5B zoning district, which is contrary to Z.R. §42-14 D(2)(b) and D(3)(a).

PREMISES AFFECTED - 371 Lafayette Street, aka 21/23 Great Jones Street, between Great Jones and Bonds Streets, Block 530, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES -

For Applicant: Howard Zipser and Susan Leonard.

For Opposition: Doris Diether and Ellen Peterson-Lewis.

For Administration: John Scrofani, Fire Department.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE REOPEN HEARING -

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

Negative:

.....0

THE VOTE CLOSE HEARING -

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

Negative:

.....0

THE VOTE GRANT -

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

Negative:

.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated June 27, 2001, acting on Applic. No. 102986663, reads:

- “1 .Proposed eating and drinking establishment Use Group 6A in excess of 5,000 square feet within M1-5B Zoning District is contrary to Zoning Resolution Section 42-14 (D)(3)(a).
2. Proposed eating and drinking establishment below the floor level of the second story is contrary to Zoning Resolution 42-14(D)(2)(b).”; and

WHEREAS, a public hearing was held on this application on March 5, 2002 after due notice by publication in The City Record, laid over to April 16, 2002 and then to May 21, 2002 for decision; and

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

WHEREAS, this is an application under Z.R. §72-21, to permit, the proposed eating and drinking establishment, Use Group 6A, in excess of 5,000 square feet, to be partially

located below the floor level of the second story, of a building to be constructed in an M1-5B zoning district, which is contrary to Z.R. §42-14 D(2)(a) and D(2)(b); and

WHEREAS, the applicant represents that the zoning lot is an irregularly shaped parcel which has a total area of 5,549 square feet, with 200'10" of frontage on the eastern side of Lafayette Street, 49'1.75" of frontage on Great Jones Street and 6'7.25" of frontage along Bond Street; and

WHEREAS, the applicant further represents that the premises has been occupied by marginal commercial uses for the past 60 years, including a gasoline station, automobile repair business, newsstand and juice bar; and

WHEREAS, the applicant states that the only remaining structure on the zoning lot is a 769 square foot eating establishment occupying a deteriorated and outdated one-story brick structure fronting on Great Jones Street; and

WHEREAS, the applicant proposes to demolish the existing building and construct a new 3-story structure with approximately 11,975 square feet of floor area; and

WHEREAS, the applicant represents that the ground and second floors of the proposed building will be occupied by the restaurant while the third floor will be entirely enclosed, containing accessory offices and an area for private functions; and

WHEREAS, the applicant states that the restaurant will be a 24-hour restaurant/diner with both take-out and eat-in services; and

WHEREAS, the applicant states that the subject site is irregular in shape, with a northern width of approximately 49 feet and a southern width of only 6 feet 7 inches; and

WHEREAS, the applicant claims that the zoning lot is small with an area of only 5,549 square feet and due to the lot's odd shape, only 4,492 square feet can be used for a conventionally shaped floor plate; and

WHEREAS, the applicant contends that the combination of this small floor plate with the odd, narrow, and shallow shape of the zoning lot does not permit nor allow for the creation of an economically viable commercial, industrial, manufacturing, or warehouse- distribution type building; and

WHEREAS, the applicant further contends that these conforming uses require large unencumbered floor plates, high ceilings, and loading docks with off-street parking which are absent on the site; and

WHEREAS, evidence in the record indicates that a portion of the Lafayette Street frontage was formerly improved with a one-story building, which was most recently occupied by an automotive repair service, and in the past has also served as a gasoline service station; and

WHEREAS, the applicant represents that this portion of the zoning lot was further encumbered with six petroleum underground storage tanks which were removed at substantial cost; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, which are the result of the site's irregular shape and history of development present a practical difficulty and unnecessary hardship for conforming with the strict application of the Zoning Resolution; and

WHEREAS, the Board finds that evidence in the record, including a feasibility study sufficiently demonstrates that a complying development would not yield a reasonable return; and

WHEREAS, the applicant represents that the character of the neighborhood is predominantly commercial and residential

with many eating and drinking establishments serving the residential community; and

WHEREAS, the applicant contends that the proposed restaurant is in keeping with the area's established character, as the proposed restaurant will be replacing a diner-type restaurant with similar hours; and

WHEREAS, the applicant represents that the restaurant will also have an accessory lounge area that will operate from 6:00 p.m. to 4:00 a.m. and a bar in the main dining room that will operate from 8:00 a.m. to 4:00 a.m. daily except Sunday when it will operate from 12:00 p.m. to 4:00 a.m.; and

WHEREAS, the applicant represents that during the warmer months, an outdoor table area or café will be operated from 10:00 a.m. to 12:00 a.m. Sunday through Thursday and will close at 1:00 a.m. on Friday and Saturday; and

WHEREAS, the applicant states that any outdoor music will consist of background music only and will be kept below 45dBA and that there shall be no outdoor music after 9 PM; and

WHEREAS, the applicant further states that there will be a security presence 7 days a week between the hours of 12:00 a.m. and 7:00 a.m.; and

WHEREAS, in order to expose the neighbors to the least amount of noise disturbance, garbage will be kept indoors until the time of collection and be picked up between the hours of 11:00 p.m. and 12:00 a.m. on the Jones Street side of the building;

WHEREAS, the applicant further contends that the proposed development will replace a dilapidated building into one housing the same use, but with a building that will better serve community residents; and

WHEREAS, in response to Board and concerns, the applicant agreed to limit use of the premises to Use Group 6A eating and drinking activities; and

WHEREAS, therefore, the Board finds that the proposed application will not alter the essential character of the surrounding neighborhood, nor impair the use of development of adjacent properties nor 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 the variance application is the minimum variance 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 applicant's Shandel Phase II report indicates that "the soil at the site is classified as 'clean fill with reuse options,'" and no test results indicated any hazardous or contaminated soil that exceeded any Federal, State or local environmental code or regulation; and

WHEREAS, The New York State Department of Environmental Conservation in its May 17, 2002 letter concurs with this assessment and has determined that no further investigation or response will be required at the subject site regarding spill number 94-00935; and

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

Therefore, it is 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 findings under Z.R. §72-21, and grants a variation in the application of the Zoning Resolution to permit, the proposed eating and drinking establishment, Use Group 6A, in excess of 5,000 square feet, to be partially located below the floor level of the second story, of a building to be constructed in an M1-5B zoning district, which is contrary to Z.R. §42-14 D(2)(a) and D(2)(b), on condition that all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received May 20, 2002"-(6) sheets; and on further condition;

THAT use of the premises shall be limited to Use Group 6A eating and drinking activities;

THAT the third floor shall be fully enclosed;

THAT there shall be no loitering or queuing of customers outside;

THAT the hours of operation for the accessory lounge area shall be from 6:00 p.m. to 4:00 a.m. and the hours of operation for the bar in the main dining room shall be from 8:00 a.m. to 4:00 a.m. daily except Sunday when it shall be from 12:00 p.m. to 4:00 a.m.;

THAT the outdoor table area or café shall be limited to 10:00 a.m. to 12:00 a.m. Sunday through Thursday and will close at 1:00 a.m. on Friday and Saturday;

THAT any outdoor music shall consist only of background music which shall be kept below 45dBA and that there shall be no outdoor music after 9 PM;

THAT security personnel shall be provided 7 days a week between the hours of 12:00 a.m. and 7:00 a.m.;

THAT garbage shall be picked up between the hours of 11:00 p.m. and 12:00 a.m. on the Jones Street side of the building and shall be kept indoors until the time of collection;

THAT this any change in use, ownership or lessee shall require Board approval;

THAT all signage shall be provided in accordance with BSA-approved plans;

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

THAT substantial construction shall be completed in accordance with Z.R. §72-23;

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, May 21, 2002.