

**341-03-BZ**

**CEQR #04-BSA-073M**

APPLICANT - Sheldon Lobel, P.C., for Chelsea Ventura, LLC, owner.

SUBJECT - Application November 6, 2003 - under Z.R. §72-21 to permit the proposed construction of a residential building (Use Group 2), which creates non-compliances with respect to Floor Area Ratio (a total FAR of 4.13 - including residential floor area in the cellar - where 4.0 is permitted), number of dwelling units (32 dwelling units where 27 are permitted), and rear yard equivalent (a rear yard of 57 feet where 60 is required), contrary to Z.R. §§23-145, 23-22 and 23-533.

PREMISES AFFECTED - 343 West 16<sup>th</sup> Street, between Eighth and Ninth Avenues, Block 740, Lot 12, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES - None.

**ACTION OF THE BOARD** - Application granted on condition.

**THE VOTE TO REOPEN HEARING -**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, Commissioner Caliendo and Commissioner Chin.....5

Negative:.....0

**THE VOTE TO CLOSE HEARING -**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, Commissioner Caliendo and Commissioner Chin.....5

Negative:.....0

**THE VOTE TO GRANT -**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, Commissioner Caliendo and Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION -**

WHEREAS, the decision of the Borough Commissioner, dated October 15, 2003, acting on Department of Buildings Application No. 103420647, reads:

- “1. Proposed construction of a residential building on a merged zoning lot with an existing multiple dwelling resulting in a combined FAR exceeding 4.0 creates a non-compliance, contrary to Section 23-145, Zoning Resolution.
2. Proposed total number of dwelling units on the merged zoning lot of the number in the existing building and the number in the proposed new building exceeds the number authorized by Section 23-22, Zoning Resolution, creating a non-compliance.
3. Proposed construction of a residential building on a merged zoning lot with an existing building resulting in a rear yard equivalent less than 60 ft. in depth is contrary to Section 23-533, Zoning Resolution.”; and

WHEREAS, a public hearing was held on this application on April 27, 2004 after due notice by publication in the *City Record*, with continued hearings on June 8, 2004, July 13, 2004 and August 10, 2004, and then to decision on September 14, 2004; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, Community Board 4, Manhattan, stated that it had no objection to the proposed variance and recommended its approval, with the provisos that the Board carefully evaluate the requested FAR and rear yard equivalent waivers; and

WHEREAS, this is an application under Z.R. §72-21, to permit the proposed construction of a residential building (Use Group 2) in an R8B zoning district, which creates non-compliances with respect to Floor Area Ratio, number of dwelling units, and rear yard equivalent, contrary to Z.R. §§23-145, 23-22 and 23-533; and

WHEREAS, the subject premises is comprised of two tax lots (Lots 12 and 54) situated between Eighth and Ninth Avenues and West 16<sup>th</sup> and 17<sup>th</sup> Streets, which are proposed to be merged; and

WHEREAS, the applicant represents that Lot 12 is a small, shallow and vacant lot, with a varying depth from 37’9” to 40’1”, with a total area of 974 sq. ft.; and

WHEREAS, the applicant represents that Lot 54 is a larger lot, currently improved upon with an existing residential building with 24 dwelling units and a rear yard of over 70 feet; and

WHEREAS, once merged, the new lot will have a total lot area of 4559.7 sq. ft.; and

WHEREAS, the proposed new building will be erected on Lot 12, and will be six stories high (60 feet total height), contain eight dwelling units and have a Floor Area Ratio (“FAR”) of 4.13; and

WHEREAS, this application, if approved, would lead to the following non-compliances on the merged lot: a total FAR of 4.13 (4.0 is permitted); 32 dwelling units (27 are permitted); and a rear yard equivalent of 57 feet (60 is required); and

WHEREAS, the applicant originally proposed a six-story plus penthouse building, with a FAR of 4.21; and

WHEREAS, the applicant, in response to Board concerns, reduced the FAR to 4.13, and eliminated the penthouse; and

WHEREAS, the applicant represents that the following are unique physical conditions existing on Lot 12, which create practical difficulties and unnecessary hardship in complying with underlying district regulations: (1) Lot 12 has a maximum depth of only 40 feet and an area of only 974 sq. ft.; (2) the shallow depth of Lot 12 permits only one efficiency apartment on each floor, due to Building Code requirements related to elevators and handicapped

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accessibility; and (3) Lot 12 is the only undeveloped lot on the block; and

WHEREAS, the applicant represents that subsequent to a merger with Lot 54, development on Lot 12 becomes possible, although the depth of, and the number of apartments in, the existing building on Lot 54 leads to the need for dwelling unit, FAR and rear yard equivalent waivers; and

WHEREAS, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with current zoning; and

WHEREAS, the applicant states that because of the amount of dwelling units in the building on Lot 54, construction of a complying building on Lot 12 would not allow an amount of dwelling units sufficient to enable the owner to realize a reasonable return; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the entire premises with a complying building would not yield the owner a reasonable return; and

WHEREAS, in response to Board concerns, the applicant has submitted a supplementary analysis from its financial expert analyzing the following building scenarios and the rate of return of each: (1) building without a penthouse; (2) building with a complying rear yard; (3) building without a penthouse and with a complying rear yard; (4) building without cellar residential space; and (5) building without cellar residential space or penthouse; and

WHEREAS, the applicant represents that a building without a penthouse and with a complying rear yard does not realize a reasonable return; and

WHEREAS, the applicant also represents that a building without a penthouse or cellar residential space does not realize a reasonable return; and

WHEREAS, the applicant agreed to remove the penthouse from the design of the proposed building, but the rear yard equivalent will remain at 57 feet and the cellar residential space will be retained; and

WHEREAS, the proposed 4.13 FAR includes the cellar residential space, the construction of which incurs increased construction costs necessitating, in part, the FAR waiver; and

WHEREAS, the FAR waiver is also necessitated by the inefficiency of the small floor plates (approximately 1330 sq. ft. on average) of the new building, which will be built to a depth of 55 feet to minimize the encroachment into the required rear yard equivalent; and

WHEREAS, the Board asked the applicant to further clarify the rate of return for a building with an FAR of 4.0; and

WHEREAS, in a submission dated September 7, 2004, the applicant's financial expert states that an

analysis of a 4.0 FAR scenario, without the cellar residential occupancy and attendant FAR waiver, results in a rate of return that is not reasonable versus a 4.13 FAR scenario; and

WHEREAS, the Board has reviewed this submission and finds it credible and sufficient; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformity with zoning will provide a reasonable return; and

WHEREAS, the applicant maintains that the proposed building will not negatively impact the character of the neighborhood or the use and development of the neighboring property; and

WHEREAS, the Board finds that the proposed building would comply with all applicable setback provisions, including the required street wall of between 55 and 60 feet, and with the overall height limit of 75 feet, and that there would be no visible effect resulting from the requested waivers; and

WHEREAS, the Board finds that the rear yard waiver is minimal, and would not negatively affect adjacent properties; and

WHEREAS, based on the above, the Board finds that the subject application, if granted, will not alter the essential character of the surrounding neighborhood or 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, this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in an Environmental Assessment Statement (EAS) CEQR No. 04-BSA-073M dated August 20, 2003; and

WHEREAS, 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the action is located within New

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York City's Coastal Zone Boundary, and has been determined to be consistent with the New York City Waterfront Revitalization Program; 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.

*Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and 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 Z.R. §72-21, to permit the proposed construction of a residential building (Use Group 2), which creates non-compliances with respect to Floor Area Ratio (a total FAR of 4.13 - including residential floor area in the cellar - where 4.0 is permitted), number of dwelling units (32 dwelling units where 27 are permitted), and rear yard equivalent (a rear yard of 57 feet where 60 is required), contrary to Z.R. §§23-145, 23-22 and 23-533; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received August 24, 2004"-(11) sheets; and *on further condition*:

THAT all applicable fire safety measures, including those shown on the approved plans, shall be complied with;

THAT substantial construction be completed and a Certificate of Occupancy be obtained 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, September 14, 2004.

**A true copy of resolution adopted by the Board of Standards and Appeals, September 14, 2004.**

**Printed in Bulletin Nos. 36-38, Vol. 89.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**