

CORRECTION

This resolution adopted on July 12, 2016, under Calendar No. 39-15-BZ and printed in Volume 101, Bulletin Nos. 28-29, is hereby corrected to read as follows:

39-15-BZ

CEQR #15- BSA-164M

APPLICANT – Bryan Cave, LLP, for Chun Woo Realty Corp., Owner.

SUBJECT – Application March 3, 2015 – Variance (§72-21) to permit the construction of a new 10 story, 30,235 sq., ft. office building (UG 6) with ground floor retail (UG 6) contrary to floor area (§33-122). C6-2A zoning district.

PREMISES AFFECTED – 74-76 Eighth Avenue, southeast corner of 8th Avenue and West 14th Street. Block 618, Lot 5. Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated February 27, 2015, acting on DOB Application No. 121192690 reads in pertinent part:

1. ZR 33-122: Floor area exceeds maximum permitted per ZR 33-122;

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C6-2A zoning district, the construction of a 10-story commercial building with a floor area ratio (“FAR”) in excess of the maximum permitted in the zoning district pursuant to ZR § 33-122; and

WHEREAS, a public hearing was held on this application on March 22, 2016, after due notice by publication in *The City Record*, with a continued hearing on May 24, 2016 and then to decision on July 12, 2016; and

WHEREAS, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application subject to conditions, including revisions to the proposed building; and

WHEREAS, the subject site is located on the southeast corner of Eighth Avenue and West 14th Street, in a C6-2A zoning district, in Manhattan; and

WHEREAS, the site has approximately 46 feet of frontage along Eighth Avenue, 80 feet of frontage along West 14th Street, total lot area of 3,680 sq. ft. and is occupied by three buildings, all of which will be demolished for the construction of the project proposed herein; and

WHEREAS, the applicant originally proposed to construct a 12-story commercial office building with Use Group 6 retail located on the ground floor, a street wall height pf 85'-0" at Eighth Avenue, a total height of 120'-0", and 37,166 sq. ft. of floor area (10.1 FAR) (the “Original Proposal”), contrary to the 6.0 FAR maximum permitted at the subject site pursuant to ZR § 33-122; and

WHEREAS, in addition, the Original Proposal required a waiver of the setback requirements applicable in the zoning district in order to provide a 3'-0" setback from West 14th Street; and

WHEREAS, in its Resolution, Community Board 2, Manhattan, expressed concerns regarding, *inter alia*, the 10.1 FAR proposed in the Original Proposal, the validity of the assumptions contained in the accompanying financial analysis and stated rate of return and whether the Original Proposal represented the minimum variance; and

WHEREAS, in response to these concerns, as well as questions posed by the Board regarding the extent of the requested waivers, the applicant revised the proposal to consist of a 10-story commercial office building with retail use in the cellar and on the ground floor and offices on the second through tenth floors with a street wall height of 60'-0" at Eighth Avenue, setbacks that comply with the Zoning Resolution and total floor area 30,235 sq. ft. (8.22 FAR) (the “Subject Proposal”); and

WHEREAS, because the 8.22 FAR proposed is in excess of the maximum permitted pursuant to ZR § 33-122, the applicant seeks the subject variance; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the presence of a subway tunnel beneath the premises, along with the size and shallowness of the site, are unique physical conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying zoning district regulations; and

WHEREAS, the applicant represents that the subway tunnel, which bisects the site from approximately one-third of its northern lot line to approximately one-half of its southern lot line on the western side and burdens approximately 36 percent of the lot, require expensive systems to mitigate and/or isolate the sounds, vibrations and tremors caused by the subway which prevents the development of the site with a project that is compliant with the Zoning Resolution; and

WHEREAS, in response to questions from the Board regarding the potential for residential development at the site, the applicant further submits that the limited size and shallowness of the lot frustrates the development of the subject site with a complying residential development; specifically, the 30'-0" by 40'-0" inner court required pursuant to ZR § 23-851 would occupy nearly one-third of the 3,680 sq. ft. lot and, with required stairways and elevators and extensive structure required to support a building atop a subway tunnel, result in dwelling units with small and inefficient floor plates; and

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WHEREAS, the Board agrees that the aforementioned unique physical conditions at the site create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant states that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant provided a financial analysis for (1) a 6-story commercial building with 21,515 sq. ft. of total floor area comprised of retail in the cellar and ground floor and offices on the second through sixth floors (the "As-of-Right Scenario"); (2) the same 6-story commercial building described in the As-of-Right Development in the absence of the underground subway tunnel condition (the "Typical Development Scenario"); and (3) the Subject Proposal; and

WHEREAS, the applicant represents that only the Subject Proposal would provide a reasonable return; and

WHEREAS, the Typical Development Scenario was provided in order to estimate the value of an as-of-right building on a fictitious site, one without the complained of hardship, and intended for illustrative purposes only; and

WHEREAS, the financial analysis indicated that the As-of-Right Scenario would have development costs of \$23,345,000 and a capitalized project value of \$22,350,000, resulting in a loss of \$995,000; that the Typical Development Scenario would have the same capitalized project value as the As-of-Right Scenario, but reduced development costs of \$19,388,000 for a return of \$2,962,000; and that the Subject Proposal results in a positive return of \$296,000; and

WHEREAS, the financial analysis reports that the almost \$4 million difference in development costs between the As-of-Right Scenario and the Typical Development Scenario is attributed to the additional construction costs imposed by the unique physical conditions present at the subject site and that the more than \$5 million difference in development costs between the As-of-Right Scenario and the Subject Proposal includes those costs as well as the costs associated with the four additional floors of office space provided in the Subject Proposal; and

WHEREAS, upon review of the applicant's submissions, the Board has determined that because of the 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, in accordance with ZR § 72-21(c), the surrounding neighborhood and district are characterized by one- and two-family row houses, walkup apartment buildings and

apartment buildings rising to more than fifteen-stories, most of which contain ground floor retail use, as well as larger commercial buildings including a 20-story building opposite the subject site at the northeast corner of Eighth Avenue and West 14th Street, and that, therefore, the Subject Proposal will neither alter its substantial character nor substantially impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and

WHEREAS, the applicant additionally submits that the height, massing and bulk of the Subject Proposal is more consistent with the scale of the surrounding buildings, specifically the adjoining building to the subject site's immediate southeast, and the proposed ground floor retail use is consistent with the ground floor retail uses in buildings along both Eighth Avenue and West 14th Street; and

WHEREAS, in light of the above, the Board finds that this action will not alter the essential character of the 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, consistent with ZR 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site; and

WHEREAS, the applicant submits that, as supported by the provided financial analysis and consistent with ZR § 72-21(e), the Subject Proposal is the minimum needed to provide relief; and

WHEREAS, the Board agrees, in accordance with ZR § 72-21(e), that the Subject 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 CEQR No. CEQR No. 15 BSA164M, dated February 17, 2015; and

WHEREAS, the EAS documents that the project would not have significant impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials and noise; and

WHEREAS, DEP reviewed and accepted the December 2015 Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP); and

WHEREAS, DEP requested that a Professional Engineer-certified Remedial Closure Report be

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submitted upon completion of the proposed project indicating that all remedial requirements as set forth in the December 2015 Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) have been properly implemented; and

WHEREAS, DEP reviewed the Noise Chapter in the Environmental Assessment Statement and recommends that (1) window and wall noise attenuation be installed on the West 14th Street and Eighth Avenue frontages of the proposed building as follows in order to attain an indoor noise level of 50 dBA: (a) on the West 14th Street façade, 28 dBA for zero to 100 feet elevation and 26 dBA from 101 feet to the top; (b) on the Eighth Avenue façade, 26 dBA for zero to 100 feet elevation and 23 dBA from 101 feet to the top; and (2) an alternate means of ventilation be incorporated into the building design and construction; and

WHEREAS, the also DEP reviewed and accepted the Air Quality Chapter in the Environmental Assessment Statement, subsequent memoranda and backup materials and determined that the proposed project would not result in any potential for significant adverse impacts with regards to air quality; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") completed an environmental review of the proposal and confirmed that, though it exists in the vicinity of the Greenwich Village Historic District and buildings listed as New York City Landmarks or listed on the National Register of Historic Places, the subject site does not contain any areas of architectural or archaeological significance and therefore, no impacts on architectural or archaeological resources are expected as a result of the proposal; 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.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type 1 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 to permit, on a site within a C6-2A zoning district, the construction of a 10-story commercial building with a

**A true copy of resolution adopted by the Board of Standards and Appeals, July 12, 2016.
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Copies Sent

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

floor area ratio in excess of the maximum permitted in the zoning district pursuant to ZR § 33-122; *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received June 23, 2016"—fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 8.22 , as reflected on the BSA-approved plans; and

THAT a Professional Engineer-certified Remedial Closure Report be submitted upon completion of the proposed project indicating that all remedial requirements as set forth in the December 2015 Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) have been properly implemented;

THAT such closure support shall be submitted prior to the receipt of the Certificate of Occupancy;

THAT window and wall noise attenuation be installed on the West 14th Street and Eighth Avenue frontages of the proposed building as follows in order to attain an indoor noise level of 50 dBA: (a) on the West 14th Street façade, 28 dBA for zero to 100 feet elevation and 26 dBA from 101 feet to the top; (b) on the Eighth Avenue façade, 26 dBA for zero to 100 feet elevation and 23 dBA from 101 feet to the top;

THAT substantial construction shall be completed in accordance with ZR § 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 DOB 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, July 12, 2016.

***The resolution has been amended Corrected in Bulletin Nos. 33-34, Vol. 101, dated August 24, 2016.**

