

**\*CORRECTION**

This resolution adopted on March 6, 2012, under Calendar No. 548-79-BZ and printed in Volume 97, Bulletin No. 11, is hereby corrected to read as follows:

**548-79-BZ**

APPLICANT – Bryan Cave LLP, for 249 West 29 Owners Corp.

SUBJECT – Application December 2, 2011 – Amendment of a previously approved variance (§72-21) which permitted residential use (UG2) on floors 3 through 15. Application seeks to legalize residential use on the 2nd floor, contrary to use regulations §42-481. M1-6D zoning district.

PREMISES AFFECTED – 247-251 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street, 170’ east of 8<sup>th</sup> Avenue, Block 779, Lot 10, 12, Borough of Manhattan.

**COMMUNITY BOARD #5M**

**APPEARANCES –**

For Applicant: Margery Perlmutter.

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

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted the conversion of all floors above the second floor of a 15-story commercial and manufacturing building to residential use, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on February 14, 2012, after due notice by publication in *The City Record*, and then to decision on March 6, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Otley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 29<sup>th</sup> Street between Seventh Avenue and Eighth Avenue, within an M1-6D zoning district; and

WHEREAS, the applicant notes that the site was formerly located within an M1-5 zoning district, but on September 21, 2011, the City Council rezoned the site to M1-6D; and

WHEREAS, the site has 75 feet of frontage on West 29<sup>th</sup> Street, a depth of 100 feet, and a lot area of 7,500 sq. ft.; and

WHEREAS, the site is occupied by a 50-ft. wide 15-story building at 249 West 29<sup>th</sup> Street (the “249 Building”) and an adjoining 25-ft. wide, two-story building at 247 West 29<sup>th</sup> Street (the “247 Building”) (together, the

“Building”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 15, 1980 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the conversion of all floors above the second floor of the commercial and manufacturing building to residential use, contrary to ZR § 42-00; and

WHEREAS, subsequently, the grant was amended on several occasions to permit changes in the number of dwelling units on certain floors, changes to the interior layout of the Building, and the addition of a greenhouse on the exterior balcony of the tenth floor; and

WHEREAS, the applicant now seeks to amend the grant to permit the further conversion of the three commercial units on the second floor to residential use; and

WHEREAS, the applicant states that the original variance requested conversion of the second floor of the Building, which at the time was occupied by an active conforming use, to residential as well, however the Board excluded the second floor from the variance approval; and

WHEREAS, the applicant states that in the years since the variance was granted, the owners of the three units on the second floor have had difficulty finding long-term replacement tenants, and all of the commercial spaces on the second floor are now occupied as live-work spaces; and

WHEREAS, the applicant represents that converting the second floor to residential use is necessary to provide a reasonable return because the owners are unlikely to find commercial tenants for the second floor units for the following reasons: (1) the floor plates and size of the units at the second floor are too small to be attractive to many manufacturing or commercial uses; (2) the layout of the second floor imposes hardships on the suitability and marketability of that floor for conforming uses; and (3) there is only one lobby and elevator for both the residential and commercial tenants, which creates access, egress, and security issues; and

WHEREAS, as to the physical structure of the Building, the applicant states that the Building has small floor plates with units containing less than 2,100 sq. ft. each, and are too small to accommodate the types of commercial and manufacturing uses that operate in the surrounding area; and

WHEREAS, the Board notes that the unique building conditions, which support the findings for the original variance for the third through 15<sup>th</sup> floors, namely that those floors were not viable for a conforming use due to the building’s inadequate floor plates, there was a lack of interest in such spaces for commercial use, and the decline of the manufacturing sector in the area that led to extensive vacancies, also apply to the second floor; and

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WHEREAS, as to the layout of the second floor, the applicant notes that the second floor of the 249 Building is 50 feet wide and approximately 88 feet deep (4,400 sq. ft.), and is occupied by two of the second floor units, while the second floor of the 247 Building is 25 feet wide and approximately 88 feet deep (2,210 sq. ft.), and is occupied by one of the second floor units; and

WHEREAS, the applicant states that for structural reasons there is a four-ft. wide penetration through the party wall that connects the 249 Building and the 247 Building, which separates the first and second floors of the Building into two parts; and

WHEREAS, the applicant further states that the opening in the party wall to allow access between the 247 Building and the 249 Building is limited by structural considerations, so it is not possible to treat the two portions as a single contiguous 6,610 sq. ft. space, which would be more marketable for conforming uses; and

WHEREAS, the applicant states that the elevator and stair cores, which occupy approximately 1,120 sq. ft., are located in the 249 Building and are the only means of access to the unit in the 247 Building; and

WHEREAS, the applicant represents that installing separate stairs and an elevator in the 247 Building solely to access one unit would be cost prohibitive and would significantly reduce the size of the retail space on the first floor, further reducing the Building's revenue; and

WHEREAS, as to the access issues, the applicant states that there is only one passenger elevator, while the freight elevator is manually operated and there is no full-time elevator operator on staff because it is cost prohibitive; and

WHEREAS, the applicant states that because visitors and employees of the commercial tenants at the second floor cannot use the manual freight elevator and there is no full-time elevator operator, commercial and residential tenants must share a common lobby and elevator, which results in an inappropriate mixing of public and private occupancies that poses a significant security risk to residential tenants; and

WHEREAS, the applicant represents that modification of the existing service corridor to provide separate, 36-inch wide clear access into the building by commercial tenants and their guests would require redirecting service risers and flues, re-purposing a portion of the existing disused elevator shaft into a lobby area in order to be ADA-accessible, and converting the existing freight elevator from manual to automatic which would cost in excess of \$415,000; and

WHEREAS, as noted above, the subject site was rezoned from an M1-5 zoning district to an M1-6D zoning district on September 21, 2011; and

**A true copy of resolution adopted by the Board of Standards and Appeals, March 6, 2012.**

**Printed in Bulletin No. 11, Vol. 97.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

WHEREAS, the applicant states that in M1-6D zoning districts, ZR § 42-481 permits residential use in existing buildings where the building to be converted contains less than 40,000 sq. ft. of floor area; and

WHEREAS, however, the applicant notes that the Building contains approximately 62,500 sq. ft. of floor area and therefore is not eligible for as-of-right residential conversion pursuant to ZR § 42-481; and

WHEREAS, the applicant represents that the recent rezoning of the site to M1-6D reflects that residential uses are consistent with the surrounding neighborhood, which is characterized by a mix of manufacturing, commercial and residential uses; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment is appropriate, with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 15, 1980, so that as amended this portion of the resolution shall read: "to permit the noted modification to the plans to reflect the conversion of the second floor to residential use, contrary to ZR § 42-481; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received December 2, 2011'-(3) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

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; 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." (DOB Application No. 120883491)

Adopted by the Board of Standards and Appeals, March 6, 2012.

**\*The resolution has been revised to correct Approved Plans which read: 'Received December 2, 2011'-(4) sheets now reads: 'Received December 2, 2011'-(3) sheets. Corrected in Bulletin Nos. 12-13, Vol. 97, dated March 29, 2012.**