

69-03-BZ

CEQR#03-BSA-135M

APPLICANT - Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for Bond Street, LLC, owner.

SUBJECT - Application February 12, 2003 - under Z.R. § 72-21 to permit the proposed erection of a 120' high, 10 story mixed use building, Use Groups 2 and 6, consisting of residential apartments and local retail usage, located in an M1-5B zoning district, which is contrary to Z.R. §§42-10.

PREMISES AFFECTED - 32/40 Bond Street, mid-block portion fronting on north side, of Bond Street between Lafayette and the Bowery, Block 530, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES - None.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated March 11, 2004, acting on Department of Buildings Application No. 103340396, reads, in part:

"1) The proposed 10 story plus penthouse building containing residential use in an M1-5B zoning district is not permitted as of right and its contrary to ZR 42-10"; and

WHEREAS, the above DOB decision is a new, revised version, obtained by the applicant at the request of the Board; DOB issued an earlier objection on July 10, 2003 based on a prior iteration of the application, which requested bulk, height and setback waivers, in addition to the use change; and

WHEREAS, the Department of Buildings also issued the following objection to the subject application: "Proposed commercial use (UG6) below the level of the 2nd floor in an M1-5B zoning district is not permitted pursuant to ZR 42-14(D)(2)(b)"; the applicant represents that this objection was waived by the City Planning Commission through a special permit granted on November 20, 2002; and

WHEREAS, a public hearing was held on this application on October 8, 2003 after due notice by publication in the City Record; with continued hearings on November 12, 2003, December 10, 2003, February 3, 2004, and March 10, 2004 and then laid over for decision on April 20, 2004; the decision was deferred on April 20, 2004 and laid over for decision on April 27, 2004; and

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

Caliendo, Commissioner Miele, and Commissioner Chin; and

WHEREAS, Community Board 2, Manhattan, recommended disapproval of the earlier version of this application; and

WHEREAS, the Department of City Planning appeared in opposition to the earlier version of the subject application, objecting to the FAR increase request but not to the proposed use change; and

WHEREAS, Councilmember Gerson submitted letters in opposition to the earlier and current version of the subject application; and

WHEREAS, the majority of the community based opposition was to the earlier version of the proposal, which, as noted above, requested bulk waivers in addition to the use variance; and

WHEREAS, this is an application under Z.R. §72-21 to permit the proposed erection of a 120' high, ten-story mixed-use building, Use Groups 2 and 6, consisting of residential apartments and local retail usage, located in an M1-5B zoning district, which is contrary to Z.R. §42-10; and

WHEREAS, the subject premises: is a vacant lot situated in the mid-block and fronting for 136 feet on the north side of Bond Street between Lafayette Street and the Bowery, has a total lot area of approximately 14,276 square feet, and is currently used as an open air parking lot; and

WHEREAS, the site borders on the NoHo Historic District and is approximately one block north of the newly designated NoHo East Historic District; and

WHEREAS, the proposed ten-story mixed use building will have 71,348 square feet of floor area, with retail space to be located on the ground floor; rise 74 feet along the Bond Street property line before setting back 20 feet (at the seventh floor); and have an overall height on 134 feet (including mechanicals); and

WHEREAS, since initially submitted to the Board in February 2003, the proposal has been amended four times, in response to Board and community objections to the proposed height and additional bulk; and

WHEREAS, the initial proposal was for a 15-story, 205' high building (including mechanicals), with 122,322 square feet of floor area, 20' rear yard, and an 8.57 FAR; and

WHEREAS, the first amended proposal, submitted July of 2003, was for a 14-story, 194' high building (including mechanicals), with 108,870 square feet of floor area, 30' rear yard, and a 7.6 FAR; and

WHEREAS, the second amended proposal, submitted November of 2003, was for a 12- story (plus penthouse), 179' high building (including mechanicals), with 97,543 square feet of floor area, 30' rear yard, and a 6.83 FAR; and

WHEREAS, the third amended proposal, submitted December of 2003, was for a 11-story

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(plus penthouse), 151' high building (including mechanicals), with 96,254 square feet of floor area, 30' rear yard, and a 6.74 FAR; and

WHEREAS, the Board continued to express reservations about the proposed bulk of the building, and urged the applicant to further reduce the FAR to what is permitted in the zoning district (5.0 FAR); the applicant then made the subject proposal; and

WHEREAS, the only variance required under the final version of the application is for conversion of the building from manufacturing to residential use; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardships in constructing the proposed building in conformity with underlying district regulations: (1) the site is a mid-block vacant lot within an M1-5B zoning district; and (2) the surrounding over-built conditions; specifically, the site is surrounded by buildings with high walls on its side and rear property lines; and

WHEREAS, the applicant argues that the physical conditions of the site and its immediate surroundings converge with the zoning regulations applicable to the M1-5B zoning district and the market conditions for conforming commercial and manufacturing development in the vicinity to create a hardship in developing the site as of right; and

WHEREAS, the applicant argues also that the permitted FAR is far lower than the existing built conditions surrounding the site and no residential alternatives are allowed for new construction on vacant land in the M1-5B zoning district; and

WHEREAS, the applicant claims that the overbuilt conditions surrounding the site necessitate the provision of a deep rear yard, which overcomes the hardship created by the surrounding conditions but then reduces the floor plate of the building, creating a building footprint that is too narrow to permit the construction of a building suitable and marketable for either commercial or manufacturing use; and

WHEREAS, the applicant claims that if a deep rear yard was not provided, the lower floors of the building would only have windows on the front, and these lower floors would be less marketable and greatly diminish the overall viability of a conforming development; and

WHEREAS, the applicant states that none of the factors set forth above, standing alone, would qualify as the basis for a claim of a unique physical condition leading to hardship; rather, it is the combination of the factors which prevent as of right development of the subject site from generating a reasonable return; and

WHEREAS, the applicant further represents that the above combination of conditions do not

occur on any other site within the subject zoning district aside from two others; and

WHEREAS, the Board's site visit confirmed the applicant's representation regarding the over-built conditions surrounding the site; and

WHEREAS, the Board recognizes that the regulations of the M1-5B zoning district may be onerous as applied to vacant lots, but emphasizes that vacant lots situated within M1-5B zoning districts are not inherently unique; an actual unique physical condition must be present; and

WHEREAS, the Board also concludes that market conditions do not constitute a unique physical condition, either standing alone or in combination with other factors, for purposes of meeting the finding set forth at Z.R. §72-21(a), but may be relevant for purposes of meeting the finding set forth at Z.R. §72-21(b); and

WHEREAS, based upon the foregoing, the Board finds that the fact that the land is one of the few vacant parcels in the subject zoning district surrounded by significantly overbuilt buildings to be a unique physical condition that creates practical difficulties and unnecessary hardships in developing the site in strict conformity with current applicable zoning regulations; and

WHEREAS, the applicant has submitted a feasibility study purporting to demonstrate that developing the entire premises with a conforming use would not yield the owner a reasonable return, due to the unique physical conditions existing on the zoning lot; and

WHEREAS, the feasibility study analyzed two as of right scenarios (office building and hotel) and showed that neither produced a reasonable rate of return; and

WHEREAS, the applicant maintains that the current market conditions in the Lower Manhattan area do not support manufacturing, office or hotel use at the site; and

WHEREAS, the applicant, through submissions from its financial consultant, has adequately addressed concerns from the community regarding the proposed unit size that the Board requested the applicant investigate, concluding that the proposed unit sizes were necessary to obtain a reasonable return; and

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

WHEREAS, the applicant states that the proposed building would be an appropriate addition to the mixed use neighborhood surrounding the site, which is characterized by residential, commercial and manufacturing buildings, and community facility uses; and

WHEREAS, the applicant further states that a

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street level residential and retail façade will enhance the Bond Street frontage, and the retail use will provide new jobs and expanded neighborhood services; and

WHEREAS, the Board notes that the applicant has committed to creating a façade that is contextual with the district; and

WHEREAS, opposition has made various claims about the proposed building's impact on the character of the neighborhood, suggesting that the height of the building is excessive given the height of neighboring buildings; and

WHEREAS, the Board notes that no height waiver is sought by the applicant, and that an as of right building would have the same alleged impact; and

WHEREAS, the Board has conducted its own site visit and has ascertained that the proposed building will be contextual with the as built conditions in the immediate and surrounding area; and

WHEREAS, the Board finds that the residential use of the proposed building is not incompatible with other uses in the area, and notes that there are other mixed use and residential buildings in the immediate and surrounding area; 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 Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, after taking guidance from the Board as to the need for additional bulk and height, the applicant has drastically reduced the scope of the proposal, limiting the requested variance to conversion from manufacturing to residential use; and

WHEREAS, consequently, the Board finds that the current 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, a Restrictive Declaration was requested by the New York City Department of Environmental Protection ("DEP") to address potential hazardous materials concerns on the subject site prior to development of the proposed project; the Restrictive Declaration was submitted to DEP's Legal Affairs Office for review and approval and following DEP's approval, the Restrictive Declaration was executed and recorded on April 5, 2004; and

WHEREAS, DEP conducted a review of the

Applicant's Air Quality and Noise Assessments and submitted a letter dated March 11, 2004 to the BSA stating there would not be any potential adverse air quality or noise impacts due to the proposed project; and

WHEREAS, the applicant has submitted a revised shadow analysis assessment, previously submitted to the Landmarks Preservation Commission ("LPC") and the BSA on April 5, 2004, in addition to plans showing that the potential shadow impacts of the proposed building will not be perceptibly greater than the potential impacts of an as-of-right development; the applicant also submitted revisions to LPC and the BSA regarding Attachment A, "Historic Resources" in the Environmental Assessment Statement; on April 6, 2004, LPC approved the revised shadows analysis assessment and revised Historic Resources section; and

WHEREAS, the applicant's Stage 1A Archaeological Assessment had determined that there was the potential for the site to host historical archaeological resources dating from the 1830s-1850s; based on LPC's review of the Stage 1A Archaeological Assessment, they determined that field testing was necessary to address potential archaeological concerns identified on the site; in response to LPC's determination, the applicant's consultant prepared an archaeological field testing protocol which LPC approved on March 17, 2004; and

WHEREAS, the Board has conducted an environmental review of the proposed action and the Final Environmental Assessment Statement 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 with the conditions noted below 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, limited to the objections cited, to permit the proposed erection of a 120' high, 10 story mixed use building, Use Groups 2 and 6, consisting of residential apartments and local retail usage, located in an M1-5B zoning district, which is contrary to Z.R. §§42-10; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 22, 2004"- (10) sheets and on further condition:

THAT no retail/commercial use will be permitted in the rear yard; no retail/commercial access will be permitted to the rear yard;

THAT the above condition will appear on the

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certificate of occupancy;

THAT any non-retail/commercial use of, or access to, the rear yard as may be required by the Building Code or any other applicable law is subject to approval of the Department of Buildings;

THAT the applicant shall comply with the conditions stipulated in the Restrictive Declaration;

THAT archaeological field testing of the project site shall take place before construction of the proposed project commences; upon completion of field testing, a report on the field investigation shall be submitted to LPC for review;

THAT the proposal shall comply with all applicable fires safety regulations;

THAT substantial construction will 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, April 27, 2004.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 27, 2004.
Printed in Bulletin No. 19, Vol. 89.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.