

69-07-BZ

CEQR #07-BSA-070M

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLP, for 240 West Broadway, LLC, owner.

SUBJECT – Application March 23, 2007 – Variance (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units; contrary to use regulations (§42-10). M1-5 district (Area B-1 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 240 West Broadway, northwest corner of the intersection of North Moore Street and West Broadway, Block 190, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 15, 2007, acting on Department of Buildings Application No. 104631837, reads in pertinent part:

“The proposed residential use is not permitted as-of-right in an M1-5 District within Area B-1 of the Special Mixed District and is contrary to ZR 42-10;

There are no bulk regulations governing residential buildings in M1-5 District. (BSA to determine);” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5 zoning district within area B1 of the Special Tribeca Mixed Use District, a nine-story residential building with six dwelling units and a ground floor accessory parking space, which is contrary to ZR § 42-10 and; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in the *City Record*, with a continued hearing on September 25, 2007, and then to decision on October 30, 2007; and

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

WHEREAS, Community Board 1, Manhattan, recommends approval of the application on condition that the applicant adopt a construction management plan designed to minimize the impact of construction on surrounding historic buildings and avoid the use of a hydraulic pile-driving method, and further recommended that the applicant consider retail uses for the ground floor; and

WHEREAS, certain neighbors, some of whom were represented by counsel (the “Opposition”) provided testimony and made submissions in opposition to this application; the Opposition contends that (1) the building is not compatible with neighborhood character; (2) the

proposed construction could endanger nearby buildings; and (3) the applicant should have analyzed the feasibility of retaining the pre-existing parking lot; and

WHEREAS, the subject premises is located at the northwest corner of West Broadway and North Moore Street, with frontage on both streets, and has 4,207 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5 zoning district within Area B1 of the Special Tribeca Mixed Use District; and

WHEREAS, the site is currently occupied by a 30-space parking lot, with an advertising billboard; and

WHEREAS, the applicant originally proposed a seven-unit residential building with a floor area of 23,139 sq. ft. (5.50 FAR), a street wall height of 72’-0”, a total building height of 108’-0”, and one accessory parking space; and

WHEREAS, the current proposal is for a six-unit residential building with a floor area of 22,911 sq. ft. (5.45 FAR), a street wall height of 72’-0”, a total building height of 108’-0”, and one accessory parking space; and

WHEREAS, as to the proposed building, (1) the cellar level will be occupied by storage and accessory use, (2) the first floor will be occupied by a residential entrance on North Moore Street, the lower portion of a duplex residential unit, a 350 sq. ft. accessory parking space, and a 1,204 sq. ft. courtyard, (3) the second floor will contain the upper portion of the duplex residential unit, (4) the third through sixth floors will each be occupied by individual floor-through residential units, and (5) the seventh through ninth floors will be occupied by a three-story penthouse unit surrounded by a terrace on both streetfronts, for a total of six residential units; and

WHEREAS, further, the proposed building will provide a setback above the sixth floor on both the West Broadway and North Moore frontages at a height of 72’-0”, with a 10’-0” setback on the West Broadway frontage and 15’-0” setback on the North Moore frontage and will reach a height of 108’-0” above the ninth floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; (2) the site is irregularly-shaped; and

WHEREAS, as to size, the applicant represents that the small size of the lot results in an inefficient floor plate, in which a disproportionate share is devoted to the building core (elevators, stairways, and bathrooms) which is comparable in size to a core that could serve a larger floor plate; and

WHEREAS, the applicant represents that this condition results in a higher percentage of non-revenue generating floor area than for a building with a larger floor plate; and

WHEREAS, as to the site’s shape, the applicant states that it is a six-sided irregular shape characterized by an unusual obtuse angle due to its location at the intersection of West Broadway and North Moore Street;

69-07-BZ
CEQR #07-BSA-070M

and

WHEREAS, specifically, the applicant states that the site is bounded on the east side by West Broadway, with 52'-10.5" of frontage; and on the south by North Moore Street, with 51'-0.75" of frontage; and

WHEREAS, because of the site's unusual obtuse angle, and the large amount of street frontage in relation to the depth of the lot, there is a high ratio of exterior walls to usable interior which increases the cost of construction; and

WHEREAS, the applicant has identified premium construction costs associated with the need for such a high proportion of exterior walls; and

WHEREAS, the applicant represents that the small size of the site and its irregular configuration would not accommodate efficient floor plates for a conforming development at the site; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram and a land use map of the area, which illustrates that the site is the only vacant parcel reflected on the radius diagram with a comparable lot size or shape; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed: (1) a conforming office building with ground floor retail use; (2) a conforming hotel; (3) the original proposed nine-story residential building with 5.5 FAR; and (4) a nine-story residential building with a 5.0 FAR; and

WHEREAS, at hearing, the Board asked the applicant to revise the financial analysis to eliminate 408 Greenwich Street from the comparables that establish the site value, since its high value may be attributed to the Board grant associated with the site; and

WHEREAS, in response, the applicant removed the reference to 408 Greenwich Street's value, reduced the site value and revised the financial analysis accordingly, and

WHEREAS, the feasibility study indicated that a conforming office building, a conforming hotel, and a residential building with 5.0 FAR, would not result a reasonable return, while the original proposal of 5.5 FAR would result in a reasonable return; and

WHEREAS, the Board questioned the analysis of the original proposal that contained a first floor unit with a below-grade cellar laundry room that counted as floor area; and

WHEREAS, the proposal was revised to eliminate the below-grade cellar/laundry floor area from the first floor unit, thereby reducing the FAR from 5.50 to 5.45; and

WHEREAS, further, the applicant adjusted the value for the ground floor unit and the financial analysis which indicated that the revised proposal

would result in a reasonable return; and

WHEREAS, the Board also raised concerns regarding the feasibility analysis for the residential building with an FAR of 5.0 (lesser variance alternative) which contained a double-height unit on the ground floor of a nine-story building; and

WHEREAS, specifically, the Board questioned whether an eight-story building with the same FAR would be a more feasible alternative; and

WHEREAS, a response from the applicant demonstrated that an eight-story residential building with an FAR of 5.0 would yield a lower return than the nine-story residential building with the same FAR; and

WHEREAS, the applicant explained that units on the top floors afforded by the height of the nine-story building command a significant premium;

WHEREAS, the Board questioned whether the height premium of a nine-story building would offset the lower construction costs of an eight-story building, and whether the projected value of the ground floor double-height unit in the 5.0 FAR residential building reflected the premium associated with double-height space; and

WHEREAS, the applicant made a submission to the Board outlining the cost for the eight-story and nine-story 5.0 FAR alternatives and explaining the differences in cost for each line item; the applicant also supplied an analysis demonstrating that the double-height unit had been valued at a higher per square foot rate than the single-height ground floor unit and that the premium had been incorporated into the analysis; and

WHEREAS, as to the feasibility study, the Opposition testified that the applicant should have analyzed the feasibility of retaining the pre-existing parking lot; and

WHEREAS, in response, the applicant made a submission to the Board showing that the current use as an attended parking lot would provide an unreasonably low return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject 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 the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area has a high concentration of residential uses; and

WHEREAS, the applicant states that the residential use is consistent with the character of the area, and with the C6-2 zoning district directly adjacent to the site which allows residential use; and

WHEREAS, the applicant further states that in the subject M1-5 zoning district, buildings constructed prior to December 15, 1961 with a lot coverage of less than

69-07-BZ
CEQR #07-BSA-070M

5,000 sq. ft. are permitted to convert all but the first and second floors to residential use as of right; and

WHEREAS, the Opposition raised concerns at the hearing concerning the appropriateness of the proposed building's height and FAR to the surrounding area; and

WHEREAS, as to height and massing, the applicant states that the proposed building would be similar in height to existing buildings in the neighborhood; and

WHEREAS, the applicant notes that the building's height is within the parameters permitted for a conforming building in the subject M1-5 zoning district; and

WHEREAS, the applicant further states that there are buildings in the surrounding area that exceed the height and FAR of the proposed building; and

WHEREAS, nevertheless, at hearing, the Board asked the applicant to address the compatibility of the proposed bulk and building height to nearby buildings; and

WHEREAS, the applicant submitted information about nearby building heights which reflects that there are two buildings on the same block which are taller than the proposed building; and

WHEREAS, the applicant submitted an illustration noting the heights and FAR of buildings in proximity to the subject site; and

WHEREAS, specifically, this illustration shows two of the five existing buildings on the block have heights of 115'-0" and FARs of 8.4 and 8.84, respectively, and 11 buildings within the immediate vicinity exceed the height and FAR of the proposed building; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's height and FAR are compatible with other buildings in the neighborhood; and

WHEREAS, the Board finds that the introduction of six dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the Opposition raised a concern that the site is adjacent to several buildings which are historic in nature and which require extra measures for protection during construction, including underpinning; and

WHEREAS, the Board notes that the applicant has agreed to provide protection during construction to adjacent buildings and has submitted a construction management plan to the Board that will be approved by DOB prior to the issuance of any building permits; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding 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 the hardship herein was not created by the owner or a predecessor in title, but is due to the unique dimensions of the lot; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

WHEREAS, the Board observes that the proposed building of six dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, further, the Board notes that the applicant modified the application to reduce the number of units from seven to six and to eliminate the cellar/laundry room from the first floor unit, thereby reducing the FAR from 5.50 to 5.45; and

WHEREAS, the applicant analyzed the feasibility of a residential building with a 5.0 FAR and concluded that it would not provide a reasonable return; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, accordingly, the Board finds that this 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, certain speakers at the hearing stated that they had not received the required notice of the hearing; and

WHEREAS, the applicant established that it had notified all property owners in accordance with Board procedures; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617 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 (EAS) CEQR No. 07BSA070M, dated July 24, 2007; and

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

WHEREAS, The New York City Landmarks Preservation Commission ("LPC") has determined on February 5, 2007 that the project site may be archaeologically sensitive and that artifacts from the 19th century may lie beneath the surface of the site. An archaeological documentary study dated May 2007 was submitted to LPC to determine which portions of the site may contain recoverable materials. The documentary study, which confirmed the site's potential sensitivity, has been reviewed and accepted by LPC on June 1, 2007. The June 1, 2007 LPC findings requested archaeological field testing. On June 25, 2007 LPC approved the field testing protocol with a stipulation that the applicant alert

69-07-BZ

CEQR #07-BSA-070M

LPC when the field testing is scheduled to commence; and

WHEREAS, the Department of Environmental Protection ("DEP") Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a July 23, 2007 Environmental Assessment Statement, (2) an August 2006 Phase I Environmental Site Assessment (3) an August 2007 Phase II Environmental Site Investigation Report; and (iv) the August 2007 Remedial Action Plan (RAP) and Health and Safety Plan (HASP); and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, DEP approved the RAP and HASP on September 19, 2007 and concluded that the applicant may proceed with construction provided that a Remedial Closure Report, certified by a Professional Engineer, is submitted by the applicant to DEP showing that all remedial requirements have been properly implemented; 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; and

Therefore it is Resolved that the Board of Standards and Appeals issues a 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 and grants a variance, to permit, within an M1-5 zoning district within Area B1 of the Special Tribeca Mixed Use District, the construction of a nine-story, six-unit residential building, which is contrary to ZR § 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 October 2, 2007" – twenty (20) sheets and "Received October 26, 2007" – one (1) sheet; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a six-unit residential building with a floor area of 22,911 sq. ft. (5.45 FAR), a street wall height of 72'-0", a total building height of 108'-0", and one accessory parking space;

THAT the construction protection plan for 7 North Moore Street, 8 Beach Street, 246 West Broadway, and 248-50 West Broadway that was submitted to the BSA, dated September 28, 2007, shall be followed;

THAT prior to the issuance of building permits,

DOB shall inspect the site conditions and review and approve the construction protection plans for 7 North Moore Street, 8 Beach Street, 246 West Broadway, and 248-50 West Broadway, and shall modify such plans, if necessary;

THAT prior to the issuance of building permits, including any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or its successor(s) shall complete the archaeological investigation to LPC's satisfaction;

THAT prior to the issuance of any building permits, including any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or its successor(s) shall perform all the hazardous materials remedial measures and the construction health and safety measures delineated in the Remedial Action Plan and the Health and Safety Plan;

THAT the issuance of building permits shall be contingent upon the issuance of a Final Notice of Satisfaction or a Notice of No Objection by DEP indicating that the Remedial Action Plan and Health and Safety Plan have been completed to its satisfaction;

THAT DEP and LPC shall be contacted to coordinate the timing and completion of field testing and soil remediation activities;

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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 30, 2007.

A true copy of resolution adopted by the Board of Standards and Appeals, October 30, 2007.

Printed in Bulletin No. 43, Vol. 92.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.