

75-03-BZ

CEQR #03-BSA-140M

APPLICANT - Sheldon Lobel, P.C., for Deborah Raymond, owner.

SUBJECT - Application February 27, 2003 - under Z.R. § 72-21 to permit in an M1-6 zoning district, the legalization of residential use, Use Group 2, on the second through fifth floors of a mixed-use building, which is contrary to Z.R. Section 42-00.

PREMISES AFFECTED - 326 Seventh Avenue, between West 28th and 29th Streets, Block 778, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES -

For Applicant: Janice Cahalane.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Caliendo and Commissioner Miele.....4

Negative:0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated January 28, 2003 acting on Application No. 103314673 reads:

“Proposed U.G. 2 residential use is not permitted as of right in M1-6 district. It is contrary to Section 42-10 ZR.”; and

WHEREAS, a public hearing was held on this application on June 24, 2003 after due notice by publication in *The City Record*, and laid over to July 22, 2003 and then to September 9, 2003 for decision; and

WHEREAS, Community Board No. 5 in Manhattan recommends conditional approval of the subject application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Vice Chairman Satish Babbar, Commissioner Joel Miele, and Commissioner Peter Caliendo; and

WHEREAS, this is an application under Z.R. §72-21, to permit, in an M1-6 zoning district, the legalization of residential use, Use Group 2, on the second through fifth floors of a mixed-use building, which is contrary to Z.R. Section 42-00; and

WHEREAS, the subject site is located on the westerly side of Seventh Avenue, between West 28th Street and West 29th Street and is currently improved with a five-story building; and

WHEREAS, the record indicates that the ground floor is occupied by a conforming use and the three units located on the second, third, fourth and fifth floors were leased as commercial space, but are currently occupied with residential uses with home occupation; and

WHEREAS, evidence in the record indicates that the City Planning Commission granted an application for Determination of Residential Loft Occupancy for all units above the first floor in both the subject and adjacent buildings pursuant to Zoning Resolution §§15-021 and 42-133 under application number N831692ZJM; and

WHEREAS, however, a Certificate of Occupancy for residential use was never obtained for the subject building; and

WHEREAS, the record indicates that the applicant documented good-faith attempts to obtain conforming tenants for the upper floors; and

WHEREAS, the applicant represents that there are unique conditions which render the subject building inefficient for conforming occupancy; and

WHEREAS, the subject building lacks an elevator and loading berths which would preclude the effective movement of commercial or manufacturing goods; and

WHEREAS, the applicant contends that the ceiling heights are too low to accommodate conforming uses; and

WHEREAS, the Board finds that the aforementioned unique physical conditions create an unnecessary undue hardship in developing the site in conformity with the current zoning regulations; and

WHEREAS, evidence in the record, including a feasibility study, demonstrates that developing the site with a conforming development would not yield a reasonable return; and

WHEREAS, the record indicates that the surrounding area contains a number of residential uses and community facilities; and

WHEREAS, therefore, Board finds that the proposed application will not alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties nor be detrimental to the public welfare; and

WHEREAS, the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that the variance is the minimum variance necessary to afford relief; and

WHEREAS, 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 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.

75-03-BZ

CEQR #03-BSA-140M

Therefore, it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, 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, in an M1-6 zoning district, the legalization of residential use, Use Group 2, on the second through fifth floors of a mixed-use building, which is contrary to Z.R. Section 42-00, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 27, 2003"- (5) sheets and "Received July 9, 2003 - (1) sheet, and *on further condition*;

THAT future rental agreements, leases, contracts of sale, and deeds for the subject property contain a disclosure putting all parties on notice that the subject property is located within an M1-6 manufacturing and commercial zoning district and may be in proximity to possible as-of-right use of any existing or future manufacturing or commercial use in the subject or adjoining buildings;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the applicant shall comply with all applicable fire safety measures;

THAT substantial construction shall be completed in accordance with Z.R. §72-23;

THAT the above conditions shall be noted in the Certificate of Occupancy;

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 9, 2003.

**A true copy of resolution adopted by the Board of Standards and Appeals, September 9, 2003.
Printed in Bulletin No. 34-37, Vol. 88.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.