

75-12-BZ

CEQR #12-BSA-106M

APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.
SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 29, 2012, acting on Department of Buildings Application No. 120991150, reads in pertinent part:

Proposed works to create a new use – UG#6 below the floor level of second floor level in Zoning M1-5B is not permitted as per ZR 42-12/2b. Provide approval from BSA as per ZR 42-12; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing six-story building to a commercial retail use (UG 6) with expansion into the cellar and accessory retail use in the subcellar, contrary to ZR § 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in the *City Record*, with a continued hearing on January 15, 2013, and then to decision on February 26, 2013; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application, with the condition that an eating and drinking establishment not be permitted; and

WHEREAS, the subject site is a through lot with frontage on Broadway and Mercer Street, between Prince Street and Spring Street, in an M1-5B zoning district within the SoHo-Cast Iron Historic District; and

WHEREAS, the site has 25 feet of frontage on Broadway and Mercer Street, a depth of 200.25 feet, and

a lot area of 5,006.25 sq. ft.; and

WHEREAS, the site is currently occupied by a 26,058 sq. ft. (5.2 FAR) building with a five-story portion on Mercer Street and a six-story portion on Broadway, with ground floor retail use, commercial use on the second floor, and Joint Live Work Quarters for Artists (“JLWQA”) units on the third through sixth floors; and

WHEREAS, on April 12, 1988, under BSA Cal. No. 1081-85-ALC, the Board granted an authorization pursuant to ZR § 72-30 to exclude floor area from the relocation incentive contribution relating to the building’s change of use from commercial/manufacturing to JLWQA use on the third through sixth floors; and

WHEREAS, the applicant now seeks to legalize the 4,832 sq. ft. of retail floor area on the first floor, and to expand the retail use to 10,266 sq. ft. of floor space at the cellar and sub-cellar; and

WHEREAS, because Use Group 6 retail is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the narrowness of the lot; and (2) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the narrow width, the applicant states that the building has a width of 25’-0”, which results in narrow floor plates that are ill-suited for manufacturing use or other conforming uses; and

WHEREAS, further, the applicant represents that the building has a light well which is along one lot line and measures 5’-10” by 29’-10”, reducing the effective interior width of the building to 15’-5” at its narrowest point, which exacerbates the hardship by further limiting the floor plates for a conforming use; and

WHEREAS, the applicant represents that the configuration on the subject site is unique in the surrounding area; and

WHEREAS, the applicant provided a study which indicated that out of 500 lots on blocks zoned M1-5B or M1-5A within 1,000 feet of the site, there are only 182 lots that are 25’-0” or less in width; of these 182 lots, 75 lots have an effective width of less than 25’-0”, and only five of these lots have conforming uses on the ground floor; and

WHEREAS, further, of these 75 lots, only six contain buildings with light wells other than the subject site; and only one building containing a light well is occupied by a conforming use (JLWQA) on the ground floor; and

WHEREAS, the applicant concludes that the lack of conforming uses occupying buildings with narrow widths reinforces the fact that such narrow widths are unable to reasonably accommodate conforming uses; and

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WHEREAS, as to the obsolescence of the building, the applicant identifies the following conditions: (a) the absence of a loading dock and the inability to install a loading dock, (b) limited street access at the site, (c) severely limited space to install any equipment to accommodate light manufacturing uses and (d) the lack of a working freight elevator; and

WHEREAS, the applicant states that other narrow properties within 400 feet of the site may have similar characteristics, however, none are occupied by a conforming use; and

WHEREAS, the applicant states that, further, the ground floor tenant is severely limited in its access to the building since the upper floor JLWQA tenants have street access through both Broadway and Mercer Street; and

WHEREAS, based on the above arguments and analyses, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) conforming use at the first floor and cellar; and (2) the proposed ground floor and cellar retail use; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, the applicant represents that the first floor and the cellar were listed with a real estate broker for a period of 120 days, however the broker was unable to secure a tenant to occupy the space for light manufacturing use; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity contain ground floor retail uses with residential space above, particularly along both Broadway, a major retail street, and along Mercer Street between Prince and Spring Streets; and

WHEREAS, further, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, approving the proposal on February 13, 2013; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant has agreed to not allow any eating or drinking establishments to occupy the ground floor space; and

WHEREAS, based upon the above, 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; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the applicant notes that there is no proposed increase in the bulk of the building; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, 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, Sections 617.6(h) and 617.2(h) of 6 NYCRR; 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. 12BSA106M, dated October 3, 2012; and

WHEREAS, the EAS documents 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, 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 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, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the

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legalization of the first floor of an existing building to a commercial retail use (UG 6) with expansion into the cellar and accessory retail use in the sub-cellar, contrary to ZR § 42-14(d)(2)(b); *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 February 7, 2013"—seven (7) sheets; and *on further condition*:

THAT no eating and drinking establishment will be permitted on the site;

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 substantial construction shall be completed pursuant to ZR § 72-23;

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, February 26, 2013.

**A true copy of resolution adopted by the Board of Standards and Appeals, February 26, 2013.
Printed in Bulletin Nos. 8-9, Vol. 98.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.