

77-13-BZ

CEQR #13-BSA-102M

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 45 Great Jones Street LLC, for Joseph Lauto, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit residential use, contrary to ZR 42-00 and ground floor commercial use contrary to ZR§42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 45 Great Jones Street, between Lafayette and Bowery Streets, on the south side of Great Jones Street, Block 530, Lot 29, 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 Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings, dated July 15, 2013, acting on Department of Buildings Application No. 121329026, reads, in pertinent part:

Proposed UG 2 residential use is not permitted in an M1-5B and is contrary to ZR 42-10; Proposed UG 6 retail use is not permitted in M1-5B below the floor level of the second story and is contrary to ZR 42-14(D)(2)(b); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the NoHo Historic District Extension, the construction of an eight-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in the *City Record*, and then to decision on October 29, 2013; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of the application on condition that the ground floor not be used as an eating and drinking establishment; and

WHEREAS, the subject site is an interior lot located on the south side of Great Jones Street between Lafayette Street and Bowery, within an M1-5B zoning district within the NoHo Historic District Extension; and

WHEREAS, the site has 27 feet of frontage along Great Jones Street, a lot depth of 100 feet, and a lot area of 2,700 sq. ft.; and

WHEREAS, the site is occupied by a three-story building that was built in 1915 and has historically been occupied by commercial and light industrial uses; the applicant represents that the building has been vacant since 2008 and its most recent use was as a lumber yard;

and

WHEREAS, the applicant represents that the proposed mixed residential (Use Group 2) and commercial (Use Group 6) building, which will incorporate the existing building façade and certain existing structural elements, will have a total floor area of 13,500 sq. ft. (5.0 FAR), a residential floor area of 11,697 sq. ft. (4.33 FAR), a commercial floor area of 1,803 sq. ft. (0.67 FAR), a street wall height of 91.75 feet, a building height of 100 feet, and a rear yard depth of 30 feet beginning at the second story; the applicant notes that the cellar will include retail space, mechanical rooms, and accessory storage for the residences; the first story will be occupied by retail space and the residential lobby; and the second through eighth stories will be occupied by a total of six dwelling units; and

WHEREAS, because Use Group 2 is not permitted and Use Group 6 is not permitted below the floor level of the second story within the subject M1-5B zoning district, the applicant seeks use variances; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site has a small lot area, narrow lot width, and is occupied by an underdeveloped building, which is classified by the Landmarks Preservation Commission (“LPC”) as contributing to the character of the NoHo Historic District Extension; and (2); the site is surrounded on all three sides by significantly overbuilt buildings, creating a “canyon effect” that reduces the lots marketability for conforming uses; and

WHEREAS, the applicant states that the site’s lot area of 2,700 sq. ft., lot width of 27 feet, and underdevelopment (2.7 FAR) make it unique in the M1-5B district; and

WHEREAS, in support of this statement, the applicant submitted its analysis of the 157 tax lots within the M1-5B district north of Houston Street to Astor Place and between Broadway and Bowery; based on the analysis, the applicant states that while there are 23 lots that share the site’s small lot area (2,700 sq. ft. or less), narrow lot width (27 feet or less), and underutilization (3.0 FAR or less where the maximum permitted FAR is 5.0 for commercial and manufacturing uses and 6.5 for community facility uses), only ten such lots are not already occupied by residential or mixed uses; further, when vacant lots, lots that are clearly part of a larger development assemblage, and inherently unbuildable lots are eliminated from consideration, only five lots (six including the subject site) remain; and

WHEREAS, the applicant distinguishes the remaining five lots from the subject site based on various factors, including: location on a corner, already-transferred development rights, and shared historic characteristics with neighbors that make independent development unlikely; and

WHEREAS, further, the applicant notes that even if the other five lots are considered uniquely burdened by the same factors affecting the subject lot, six lots out of

77-13-BZ

CEQR #13-BSA-102M

the 157 lots within the study area represents only approximately four percent of the lots; and

WHEREAS, the applicant also contends that the site is further constrained by being occupied by a building designated as contributing to the NoHo Historic District Extension; as such, it cannot demolish the building and replace it with a new building that is better suited to modern conforming uses; and

WHEREAS, as to the “canyon effect,” the applicant asserts that the existence of a seven-story building to the east, a six-story building to the west, and seven-story building to the south, each with a rear yard depth of significantly less than 30 feet, further constrain conforming development on the site; and

WHEREAS, specifically, the applicant states that although a rear yard would not be required for certain conforming uses, the canyon effect would compel it to provide one in order to supply natural light to the rear windows of the buildings (an essential, in terms of marketability, for certain uses such as offices); and

WHEREAS, consequently, the applicant states that the site’s small lot area, narrow lot width, and overbuilt neighbors leave it with the following as-of-right scenarios, which it deems equally undesirable: (1) it could create a full lot coverage building by demolishing the rear wall, which would yield floorplates of approximately 2,700 sq. ft., a building depth of 100 feet, and limited windows for light and ventilation except along Great Jones Street; or (2) it could preserve the existing rear yard and enlarge vertically, which would provide more windows, but would result in floorplates of 2,423 sq. ft. (which is essentially what the site offers now and cannot rent); and

WHEREAS, the Board notes that it is not persuaded that the “canyon effect” is a unique condition; on the contrary, the Board finds that such condition is characteristic of numerous lots within the district; and

WHEREAS, nevertheless, the Board finds that the remaining 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 asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of: (1) an as-of-right 5.0 FAR commercial scenario (offices); (2) an as-of-right 5.0 FAR hotel scenario (22 hotel rooms); and (3) a lesser variance scenario (mixed residential and commercial within the existing building); and

WHEREAS, the applicant concluded that both as-of-right scenarios and the lesser variance scenario resulted in negative rates of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return, making it the only economically viable scenario; and

WHEREAS, based upon its review of the

applicant’s economic analysis, the Board has determined that because of the subject lot’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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a mix of medium-density residential and commercial uses, with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant represents that 43.2 percent of the 535 tax lots within the subject M1-5B district are either residential or mixed residential and commercial; thus, the applicant asserts that the existing context includes a significant amount of residential use; and

WHEREAS, similarly, the applicant states that the street-level residential lobby and retail facade will enhance the Great Jones Street frontage, which today, with the exception of the few remaining underutilized sites and parking lots, consists of small retail shops, restaurants and residential lobby entrances; and

WHEREAS, the applicant also notes that the proposal will be a natural complement to several recently approved LPC and BSA applications on Great Jones Street and Bond Street, and has the support of the community, which has historically shown an aversion to certain as-of-right uses such as hotels; and

WHEREAS, similarly, the community has, both historically and in this case, been opposed to the creation of eating and drinking establishments in the area; accordingly, the applicant has agreed not to allow an eating or drinking establishment to occupy the ground floor of the proposed building; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of six dwelling units and ground floor retail will not impact nearby conforming uses; and

WHEREAS, the Board notes that some ground floor Use Group 6 is contemplated in the M1-5B district, as evidenced by the existence of ZR § 74-781, a City Planning Commission special permit, which allows modification of the use regulations set forth in ZR § 42-14 upon a finding that the owner has made a good faith effort to rent the space to a conforming use at fair market rentals; and

WHEREAS, the applicant represents that one part-owner of the site has operated industrial businesses on the subject block for more than 50 years and is intimately knowledgeable regarding the real estate trends and availability of commercial and manufacturing space in the vicinity, and the other part-owner is a real estate development company that has had offices on Great Jones Street for more than ten years and maintains a database of conveyances and leases in the neighborhood;

77-13-BZ

CEQR #13-BSA-102M

the owners have held the site for many years and have been unable to rent for conforming uses; and

WHEREAS, as to bulk, the applicant states that the building's street wall height of 91.75 feet and building height of 100 feet are comparable to buildings in the immediate vicinity; and

WHEREAS, LPC has approved the proposal by Certificate of Appropriateness, dated January 8, 2013; 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, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's size and narrowness, the limited economic potential of conforming uses on the lot, and the fact the site is occupied by a building designated as contributing to the NoHo Historic District Extension; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, 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, 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. 13BSA102M, dated February 19, 2013; 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, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the October 2013 Remedial Action Work Plan and site-specific Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; 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 M1-5B zoning district within the NoHo Historic District Extension, the construction of an eight-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor retail, contrary to ZR §§ 42-10 and 42-14, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 17, 2013"- eighteen (18) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a total floor area of 13,500 sq. ft. (5.0 FAR), a residential floor area of 11,697 sq. ft. (4.33 FAR), a commercial floor area of 1,803 sq. ft. (0.67 FAR), eight stories, a street wall height of 91.75 feet, a building height of 100 feet, and a rear yard depth of 30 feet beginning at the second story;

THAT an eating and drinking establishment (Use Group 6) will not be permitted at the site;

THAT substantial construction will be completed in accordance with ZR § 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);

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided them with DEP's approval of the Remedial Closure Report;

THAT the approved plans will 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 29, 2013.

A true copy of resolution adopted by the Board of Standards and Appeals, October 29, 2013.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

