

CORRECTION

This resolution adopted on November 15, 2005, under Cal. No. 98-05-BZ and printed in Volume 90, Bulletin Nos. 47-48, is hereby corrected to read as follows:

98-05-BZ

CEQR #05-BSA-122M

APPLICANT – Friedman & Gotbaum, LLP, for dac bon, LLC, contract vendee.

SUBJECT – Zoning Variance application filed on April 22, 2005 – under Z.R. §72-21 – to construct a 12-story residential building with ground floor retail in an M1-5B district, contrary to Z.R. §42-00 and Z.R. §42-14(D)(2)(b) and Z.R. §43-43.

PREMISES AFFECTED – 46-48 Bond Street, premises located on the north side of Bond Street between Lafayette Street and The Bowery, Block 530, Lot 44 and 32, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lori Cuisinier.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 21, 2005, acting on Department of Buildings Application No. 104079943, reads:

- “1. The proposed 11-story building containing residential use (UG2) in an M1-5B zoning district is not permitted as of right and is contrary to ZR 42-10.
2. The proposed commercial use (UG 6) below the level of the 2nd floor in an M1-5B zoning district is not permitted pursuant to ZR 42-14(D)(2)(b).
3. The proposed building does not comply with ZR 43-43 (proposed building violates requirements for maximum height & setback of front wall).”; and

WHEREAS, a public hearing was held on this application on November 27, 2005 after due notice by publication in the *City Record*, with a continued hearing on November 1, 2005, and then to decision on November 15, 2005; 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 and Commissioner Chin; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application with certain conditions, discussed below; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an M1-5B zoning district, the proposed development of an 11-story mixed-use building with residential uses and retail uses below the level of the second story, which does not comply with the zoning requirements for use, height and setback, contrary to Z.R. §§ 42-10, 42-14(D)(2)(B) and 43-43; and

WHEREAS, the premises includes Lots 31 and 44, and has frontage on Bond Street and Great Jones Street between Lafayette Street and the Bowery; and

WHEREAS, Lot 31 is developed with a one-story plus basement building containing 3,700 sf of zoning floor area and houses the Great Jones Lumber Yard; and

WHEREAS, Lot 44 is vacant and currently used for material storage and parking by the Lumber Yard; and

WHEREAS, the applicant represents that Lot 44 was utilized as a parking lot since 1969, and prior to that it was used by a hat manufacturer; and

WHEREAS, Lot 44 and Lot 31 were merged to create a single zoning lot in 1991; and

WHEREAS, the zoning lot has a total lot area of 8,047 s.f.; and

WHEREAS, Lot 31 has a lot area of 2,470 s.f. and a width of 27'-0"; and

WHEREAS, the development site (Lot 44) has a lot area of 5,347 s.f. with a frontage of 53'-3" bordering on Bond Street, and a depth of 93'-0"; and

WHEREAS, the proposed building will have the following bulk parameters: a residential floor area ratio ("FAR") of 4.32; 34,732 sq. ft. of residential floor area; a commercial FAR of 0.35; 2,803 sq. ft. of commercial use on the ground floor; a total FAR of 4.67; a total floor area of 37,535 sq. ft.;

WHEREAS, the new building and the existing commercial building on Lot 31 will result in a total F.A.R. of 5.0 over the site; and

WHEREAS, the proposed building will also have a street wall height of 87'-0"; a setback of 15'-0"; and a total height of 120'-0"; and

WHEREAS, initially, the applicant proposed a street wall height of 85'-0"; a setback of 20'-0"; and a total height of 129'-0", but reduced the size in response to Board concerns; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance and

98-05-BZ

CEQR #05-BSA-122M

compliance with underlying district regulations: (1) the zoning lot is narrow with widths of 27'-0" on Great Jones Street and 53'-3" on Bond Street; (2) the floor plates are constrained and are inefficient and inadequate for conforming uses; and (3) even with smaller floor plates, the surrounding built-up condition compromises light and air with requisite rear yards; and

WHEREAS, the Board observes that the surrounding area has similarly-sized, lots ranging in size from 5,000 to 10,000 s.f.; however, most are developed with five to six story loft buildings that are occupied by commercial uses or joint living/work quarters; and

WHEREAS, the Board further observes that within a 400-ft. radius of the site, particularly along Great Jones Street, there are few remaining vacant or underbuilt lots; in addition, the lots that are vacant or underbuilt are different in size and shape from the subject lot; and

WHEREAS, in addition to size of the lot, the applicant represents that if it were to construct a conforming commercial development, it would not have an adequate floor plate for commercial uses because of a combination of the site's narrowness and the rear yard requirement; and

WHEREAS, the applicant also states that of the five buildings surrounding the site, four are overbuilt and rise seven stories; in addition, none of the surrounding buildings provide rear yards; and

WHEREAS, the applicant concludes that if it constructed a commercial building with no rear yard to achieve a larger floor plate, the building would still have less rentable space than other commercial buildings because certain of the units would not have adequate access to light and air due to the non-complying heights of the surrounding buildings and the absence of rear yards in the surrounding lots; and

WHEREAS, therefore, the Board finds that the unique conditions cite by the applicant, as well as the condition noted by the Board, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: a 5.0 FAR as of right office use, a 5.0 FAR as of right hotel use, and a non-conforming 5.0 FAR residential/retail use; and

WHEREAS, the applicant concluded that neither of the as of right scenarios resulted in a reasonable rate of return; and

WHEREAS, the Board noted, however, that the applicant's feasibility study did not analyze the full value of the zoning lot, as it did not include the economic impact of the lumber yard located on Lot 31 and the development rights available on that lot; and

WHEREAS, accordingly, the applicant revised its feasibility study to account for the value of Lot 31 and determined that the value of the commercial uses on the lot increased the overall return slightly, but ultimately concluded that the conforming scenarios were still not financially viable; and

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

WHEREAS, the applicant represents that the site is located on a block that includes a wide range of commercial and manufacturing uses with residential loft dwellings occupying the upper floors of the numerous six- to seven-story buildings; and

WHEREAS, the applicant has submitted a land-use map that indicates that Lot 44 is adjacent to two seven-story buildings on either side, and a portion of Lot 44 is adjacent to a seven-story building to the rear; and

WHEREAS, the applicant represents that the street wall height of the proposed building will match the street walls of the neighboring buildings; and

WHEREAS, the Board notes that initially it was concerned with the total height of the building as other buildings in the area generally did not rise above 120'-0"; and

WHEREAS, in response, the applicant lowered its floor-to-ceiling heights from 12'-0" to 11'-0", and lowered the total height of the building to 120'-0"; and

WHEREAS, the applicant represents that it will provide a 30'-0" by 53'-0" garden/recreational area along the entire rear of the building above the first floor roof top level; and

WHEREAS, although the Community Board supports the proposal, they requested that: all units will be 1,200 s.f.; a U.G. 6 eating and drinking establishment may occupy the first floor but that there will be no entertainment or live music or dancing in the establishment; adequate soundproofing will be provided for the eating and drinking establishment; and there shall be a 9'-0" reduction from the initial height of 129'-0" proposed by the applicant; and

WHEREAS, the NoHo Neighborhood Association expressed similar concerns; and

WHEREAS, the Board notes that the applicant has since lowered its proposed total height by 9'-0"; in addition, the Board has included as conditions to this grant a limitation on the uses of the ground floor; and

WHEREAS, the applicant notes that because floors 2 and 9-11 have small floor plates it would be difficult to ensure that each unit had a minimum of 1200 s.f.; and

98-05-BZ

CEQR #05-BSA-122M

WHEREAS, the Board recognizes the applicant's constraints, and suggests that instead it provide no more than two units per floor with a minimum of 1000 s.f. per unit; the applicant agreed to such modifications; 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, therefore, 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 Z.R. §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; 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. 05BSA122M, dated April 22, 2005; 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, DEP's Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection has reviewed the following submissions from the Applicant: (1) an Environmental Assessment Statement dated April 22, 2005 and (2) a September, 2004 Phase I Environmental Site Assessment Report,

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

WHEREAS, a Restriction Declaration was executed on August 31, 2005 and recorded on September 2, 2005 for the subject property to address hazardous materials concerns; and

WHEREAS, the applicant agrees as a condition to the grant herein that a written remediation schedule setting forth all remediation proposals and the estimated start and completion dates shall be submitted to DEP (with a copy to the BSA) prior to commencement of any remediation work; and

WHEREAS, the applicant agrees as a further condition to the grant herein that, upon completion of all remedial actions, a final written report should be prepared and signed by American Environmental Solutions, and provided to DEP (with a copy to the BSA) for review and approval; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal so long as the remediation proposals are implemented and completed; 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.

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 the required findings under Z.R. §72-21, to permit, within an M1-5B zoning district, the proposed development of an 11-story mixed-use building with residential uses and retail uses below the level of the second story, which does not comply with the zoning requirements for use, height and setback, contrary to Z.R. §§ 42-10, 42-14(D)(2)(B) and 43-43; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 18, 2005" – (6) sheets and "Received November 2, 2005" – (3) sheets; and *on further condition*:

THAT the proposed building will have the following bulk parameters: a residential FAR of 4.32; 34,732 sq. ft. of residential floor area; a commercial FAR of 0.35; 2,803 sq. ft. of commercial use on the ground floor; a total FAR of 4.67; a total floor area of 37,535 sq. ft.;

THAT the proposed building on Lot 44 shall have a street wall height of 87'-0"; a setback of 15'-0"; and a total height of 120'-0";

THAT the total FAR on the zoning lot shall be 5.0, with a total residential FAR of 4.32 and a total commercial FAR of 0.68;

THAT each floor shall have no more than two

98-05-BZ

CEQR #05-BSA-122M

units with a minimum unit size of 1,000 s.f.;

THAT there shall be a maximum of 20 units;

THAT the first floor may be occupied by a U.G. 6 eating and drinking establishment but there shall be no entertainment or live music or dancing in the establishment;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the interior layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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, November 15, 2005.

***The resolution has been corrected in the 7th WHEREAS which read.... “WHEREAS, Lot 31 is developed with a one-story plus basement building and houses the Great Jones Lumber Yard” now reads “WHEREAS, Lot 31 is developed with a one-story plus basement building containing 3,700 sf of zoning floor area and houses the Great Jones Lumber Yard; and” Corrected in Bulletin No. 19, Vol. 91, dated May 11, 2006.**

**A true copy of resolution adopted by the Board of Standards and Appeals, November 15, 2005.
Printed in Bulletin Nos. 47-48, Vol. 90.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.