

99-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 500 Turtles, LLC, owner.

SUBJECT – Application April 22, 2005 - under Z.R.§72-21 to permit the proposed enlargement of an existing restaurant, which is a legal non-conforming use, located on the first floor of a six-story mixed-use building, situated in an R6 zoning district, is contrary to Z.R. §22-10.

PREMISES AFFECTED - 39 Downing Street, a/k/a 31 Bedford Street, northwest corner, Block 528, Lot 77, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD

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 March 23, 2005, acting on Department of Buildings Application No. 104056940, reads:

“Proposed commercial use is not permitted as of right in a R6 Zoning District. This is contrary to section 22-10 ZR.”; and

WHEREAS, a public hearing was held on this application on October 18, 2005 after due notice by publication in the *City Record*, with a continued hearing on November 29, 2005, and then to decision on December 13, 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; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R6 zoning district, the enlargement of a restaurant on the first floor of the premises, contrary to Z.R. § 22-10; and

WHEREAS, the subject building is a six-story mixed-use building located on the northwest corner of Bedford Street and Downing Street, with two restaurants occupying the ground floor; and

WHEREAS, the applicant represents that the commercial use on the ground floor is a pre-existing non-conforming use, and seeks an enlargement of such use in the subject application; and

WHEREAS, the proposed expansion will convert an additional 393 sq. ft. of space located on the first floor of the building, situated immediately behind the tenant mailboxes and adjacent to the northeastern portion of the restaurant, from residential use to commercial use; and

WHEREAS, the applicant represents that the

expansion will allow the restaurant to accommodate an additional 16 seats; and

WHEREAS, the applicant represents that the residential space that is to be converted to commercial use is located directly above bakery ovens used by one of the restaurants; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject portion of the lot in compliance with underlying district regulations: (1) the history of use of the ovens at the cellar of the site; and (2) history of commercial use on the first floor of the site; and (3) the small size of the un-rentable space; and

WHEREAS, the applicant represents that because of the heat produced by the ovens, the space on the first floor above the ovens is un-rentable as residential space; and

WHEREAS, the applicant notes that the ovens are 150 years old and contribute to the character of the building; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulties in developing the site in compliance with the current zoning; and

WHEREAS, the applicant states that the aforementioned unique physical site conditions result in there being no reasonable possibility of using the approximately 400 sq. ft. of floor area as residential space; and

WHEREAS, the applicant represents that it has not been able to rent out the vacant space for the last fifteen years; and

WHEREAS, the applicant has submitted a financial analysis that shows that if the restaurant is not able to expand it will not generate a reasonable return; and

WHEREAS, the applicant represents that if the restaurant does not generate sufficient revenue to remain open, the closure would deprive the building owner of rental income required for the operation of the building; and

WHEREAS, at the request of the Board, the applicant has submitted a letter from the restaurant’s accountants stating that without the additional space, the restaurant may be unable to accumulate sufficient capital to address the risks inherent in the restaurant industry; and

WHEREAS, based upon the evidence submitted, the Board believes that without the additional space the restaurant would likely not succeed; and

WHEREAS, the Board recognizes that the restaurant provides a rental stream that is vital to the financial success of the entire building; and

99-05-BZ

WHEREAS, the Board has conducted an additional financial analysis with respect to the restaurant's impact on the overall return of the building; and

WHEREAS, the Board finds that if the existing restaurant vacates the premises, the building would not generate a sufficient rate of return because of lack of rental income generated from the existing restaurant; and

WHEREAS, in reaching its findings, the Board has considered the approximate 1,300 sq. ft. of other commercial space on the ground floor, as well as 18,153 sq. ft. of residential floor area on the upper floors; and

WHEREAS, the Board notes that the rate of return that would be generated from the building if the existing restaurant space is vacated would be lower than the market rate established by credible industry surveys, and would not be a sufficient return to continue to attract debt and equity investors; and

WHEREAS, accordingly, the Board finds that if the restaurant space becomes unusable the value of the entire building will likely suffer as the loss in value to the entire property would be approximately \$1,250,000; and

WHEREAS, the Board further concludes that if the expansion is permitted, the entire building would generate a reasonable return; and

WHEREAS, therefore, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood; and

WHEREAS, the applicant notes that the approximately 400 sq. ft. commercial use expansion of the first floor is contained entirely within an existing building, and is an expansion of an existing use; and

WHEREAS, the applicant notes that there are other restaurant and retail uses located in the building across the subject building on Downing Street; and

WHEREAS, therefore, 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 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.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. § 72-21, to permit, to permit, within an R6 zoning district, the enlargement of a restaurant on the first floor of the premises, contrary to Z.R. § 22-10; 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 December 6, 2005" – 1 sheet; and on further condition:

THAT a maximum of 393 sq. ft. of residential floor area shall be converted to commercial floor area as indicated on the BSA-approved plans;

THAT all interior partitions and exits shall be as reviewed and approved by DOB;

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, December 13, 2005.

A true copy of resolution adopted by the Board of Standards and Appeals, December 13, 2005.

Printed in Bulletin No. 52, Vol. 90.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.