

192-13-BZ

CEQR #13-BSA-163M

APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.

SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a residential building with accessory parking, contrary to use regulations (§42-10). M1-5 zoning district.

PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, 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, decision of the Manhattan Borough Commissioner, dated June 10, 2013, acting on Department of Buildings Application No. 121330611, reads:

Proposed Residential UG 2 is not permitted in M1-5 District; contrary to ZR 42-10; and

WHEREAS, to permit, within an M1-5 zoning district, the construction of a 12-story mixed residential/commercial building with ground floor retail use and 12 accessory parking spaces, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014 and February 4, 2014, and then to decision on March 11, 2014; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the Greenwich Village Society for Historic Preservation and the Greenwich Village Community Task Force provided testimony in opposition to the application, primarily citing concerns about the establishment of a unique hardship; and

WHEREAS, the site is located on the east side of West Street between Clarkson Street and Leroy Street, within an M1-5 zoning district; and

WHEREAS, the site has 200 feet of frontage on West Street, 176 feet of frontage on Leroy Street, 106 feet of frontage on Clarkson Street, and a lot area of approximately 28,362 sq. ft.; and

WHEREAS, the site is occupied with five buildings ranging in height from one to three stories, with commercial and industrial use including a 24-hour cabaret lounge, an automobile repair service, a vacant diner, a construction materials sales and hardware center, a vacant automobile laundry and oil change facility with outdoor parking spaces, and a shipping and receiving office; and

WHEREAS, the applicant states that all buildings on the zoning lot will be demolished in anticipation of construction; and

WHEREAS, the applicant proposes to construct a 12-story building with 141,815 sq. ft. of floor area (5.0 FAR), 77 residential units (UG 2) (4.97 FAR), ground floor retail (UG 6) (0.03 FAR), and 12 accessory parking spaces in the cellar; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the history of use and development of the site; (2) poor subsurface conditions including deep bedrock, soft soils, and shallow ground water; and (3) the location within a flood zone; and

WHEREAS, as to the history of development of the site and the existing conditions, the applicant states that the site is at the end of a series of mixed and residential uses and is the last low density underdeveloped site located along West Street within the M1-5 zoning district not developed with residential or mixed use buildings; and

WHEREAS, the applicant notes that the existing buildings, which are occupied by a mix of uses, do not conform to the current Building Code and can be classified as obsolete; and

WHEREAS, the applicant states that an 1879 map reflects that a coal yard and iron works were formerly located on the zoning lot and, later, a motor freight station, smelting and iron works, an automotive repair shop, machine shops, and building materials establishments; and

WHEREAS, as to the soil conditions, the applicant notes that the historic industrial use of the site has resulted in the contamination of the soils that will require extensive clean-up and increased construction costs; and

WHEREAS, the applicant states that during Super Storm Sandy, the site experienced significant flooding and waste oil and petroleum contaminated oil were required to be removed pursuant to the jurisdiction of the New York State Department of Environmental Conservation; and

WHEREAS, the applicant states that the site also contains multiple recognized environmental conditions (“RECs”) as described in the Phase I Environmental Assessment; and

WHEREAS, accordingly, the applicant represents that there are significant premium costs associated with

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the long history of contamination at the site; and

WHEREAS, as to the subsurface conditions, the applicant notes that the site is at the western edge of the original Manhattan shoreline, which (1) comprises urban fill that is considered unsuitable for load-bearing materials; and (2) has bedrock and subsoil conditions that require a deeper and more extensive pile foundation system; and

WHEREAS, the applicant states that the western portion of the block is located outboard of the historic shoreline (not part of the original outline of Manhattan) on reclaimed land, with the original Manhattan shoreline located at the northeast corner of the site; and

WHEREAS, the applicant asserts that if the site were two blocks north, it would be entirely inboard of the historic shoreline and not subject to the same hardship; and

WHEREAS, the applicant represents that the poor subsurface conditions at the site, including loose soil, shallow groundwater level, and the location within the 100-year flood plain lead to premium construction costs; and

WHEREAS, the applicant states that the urban fill is found about ten to 18 feet below the existing grade and comprises brown and gray coarse to fine sand with varying amounts of silt and gravel; and

WHEREAS, the applicant states that below the fill is an approximately 6'-0" layer of high plasticity clay at depths between 10.5 and 16.5 feet; and

WHEREAS, the applicant states that bedrock was encountered between 90 and 94 feet below grade and groundwater was measured at a depth of 11.5 to 18 feet below grade and about three to five feet below mean sea level; and

WHEREAS, in support of these assertions, the applicant submitted an engineering report that details the subsurface conditions and distinguishes it from nearby sites; and

WHEREAS, the applicant states that the soil and subsurface conditions require a deep pile foundation system and, due to the proximity of nearby buildings, deep piles must be drilled into caissons; and

WHEREAS, the applicant states that the high water table requires the utilization of dewatering and waterproofing measures for a development to resist the effects of hydrostatic pressure; and

WHEREAS, the applicant states that the location primarily within Flood Zone A requires higher base planes, limited uses below grade, and extra waterproofing; and

WHEREAS, the applicant also notes that regulatory changes in response to the flooding caused by Super Storm Sandy create new development obligations and requirements that impact development within the newly-adopted FEMA flood zones; and

WHEREAS, the applicant notes that the new flood zone regulations require that a building be raised to the base flood elevation of the new FEMA flood zone maps; and

WHEREAS, for the subject site, the elevation requires the ground floor to be raised five to six feet above the existing grade; and

WHEREAS, as to the uniqueness of the noted conditions, the applicant submitted a technical memorandum prepared by the project engineer, which analyzed seven sites along West Street from Leroy Street (the northern street bordering the subject site) to West 12th Street; and

WHEREAS, the applicant notes that the sites are primarily not in the same zoning district as the subject site, but they are located on West Street and have been recently developed with residential uses; and

WHEREAS, the applicant states that of the seven sites, bedrock was encountered at depths of 80 to 100 feet, comparable to the site, with the exception of 400 West 12th Street ("Superior Ink") where the bedrock extended on part of the site to approximately 140 feet below grade; and

WHEREAS, however, the applicant notes that three sites are located inboard of the historic shoreline (150 and 165 Charles Street and 176 Perry Street); two sites are located outboard of the historic shoreline (423 West Street and 400 West 12th Street); one is located at the edge (173 Perry Street) and one is split (Morton Square); and

WHEREAS, the applicant states that the three sites that are inboard of the historic shoreline have soil conditions composed of urban fill, underlain by glacial deposits underlain by bedrock; and

WHEREAS, the applicant states that the sites inboard of the historic shoreline lack the presence of organic river deposits and have been (or are currently being) developed with shallow mat foundations; and

WHEREAS, the applicant states that the four sites located outboard, on the edge, or split by the historic shoreline have soil composition similar to the other sites but with the presence of organic river deposits; and

WHEREAS, the applicant represents that the outboard sites have all been developed with deep pile foundations due to the unsuitability of the soil composition primarily due to the presence of organic river deposits; and

WHEREAS, the applicant notes that Morton Square, divided by the historic shoreline and the only site analyzed located within the M1-5 zoning district is also encumbered by the PATH tunnel within Morton Street, which puts additional constraints on the kind of foundation system required with the addition of required drilled piles to protect the integrity of the cast iron encased tunnel; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when

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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 realize a reasonable return; and

WHEREAS, the applicant provided an initial feasibility study analyzing two scenarios: (1) an as-of-right hotel building; and (2) the proposed mixed use residential/commercial building with 5.0 FAR; and

WHEREAS, the applicant's financial analysis reflected that only the initial proposal would realize a reasonable rate of return; and

WHEREAS, the Board directed the applicant to also analyze (1) a lesser variance alternative with 4.0 FAR and (2) an as-of-right office alternative; and

WHEREAS, the applicant's analysis concluded that neither supplemental alternative would realize an acceptable rate of return; and

WHEREAS, the revised financial analysis reflects that only the current proposal provides the applicant with a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that use 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(b); and

WHEREAS, the applicant notes that the site is bordered by three streets: West Street, a major arterial highway; Leroy Street, a west-moving narrow local street; and Clarkson Street, an east-moving narrow local street providing one of the few signalized left turn exits off of the southbound West Street; and

WHEREAS, the applicant notes that opposite the site across West Street is the Hudson River Park and Pier 40, which includes a mix of offices, recreational fields, and parking; and

WHEREAS, the applicant notes that north of the site is Morton Square, a mixed-use primarily residential building occupying the entire block; and

WHEREAS, the applicant asserts that Morton Square defines the beginning of a residential and mixed-use corridor extending along West Street north to the Meatpacking District at Little West 12th Street; and

WHEREAS, the applicant notes that within the M1-5 zoning district is a Special Mixed Use District – MX6, which pairs a residential R7X zoning district with the

underlying M1-5 zoning district for a portion of the two blocks northeast of the site; this area includes apartment buildings and commercial art galleries; and

WHEREAS, the applicant states that adjacent to the site to the east is an at-grade parking facility on Leroy Street and wrapping around Clarkson Street to Washington Street is a Federal Express parking facility; and

WHEREAS, the applicant states that in the immediate vicinity are a mix of uses including (1) south of the site across Clarkson Street, the St. John's Terminal building, a four-block long terminal and warehouse building; and (2) a UPS trucking and shipping terminal; and

WHEREAS, the applicant notes that the M1-5 district extends along West Street one block south, but that block is fully occupied by the St. John's Terminal Building; and

WHEREAS, the applicant states that south and east of the site is the newly-adopted mixed-use Special Hudson Square District, where infill residential use is permitted within the manufacturing area; and

WHEREAS, accordingly, the applicant asserts that the proposed residential use, with 77 units, an accessory parking garage at the cellar level, and retail use on a portion of the first floor is compatible with the nearby uses within the far West Village on West Street; and

WHEREAS, the applicant asserts that the current condition of the zoning lot lacks cohesiveness and is not reflective of the context of the surrounding area; and

WHEREAS, as to the building form, the applicant notes that the proposed 12-story building will have a height of approximately 155 feet with a curvilinear façade, occupying the full West Street block front and extending down Leroy Street and Clarkson Street; and

WHEREAS, the applicant states that the design with its undulating wall without a setback is intended to help activate the street level of the building and engage with the sidewalk; and

WHEREAS, the applicant notes that the proposed 5.0 FAR is consistent with the bulk regulations in the M1-5 zoning district and the nearby MX6 district; and

WHEREAS, the applicant states that the buildings in the area range in height from one-, two-, and three-story buildings between Christopher Street and Charles street to the Westbeth with a height of 185 feet; and

WHEREAS, the applicant notes that Morton Square on the other side of Leroy Street has 14 stories and a height of 155 feet; and

WHEREAS, the applicant notes that the as-of-right hotel building could have a height of 233 feet; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 77 dwelling units is compatible with the neighborhood character; and

WHEREAS, the Board notes that there are no bulk regulations for a residential building in an M1-5 zoning

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district, but that the proposed FAR of 5.0 and all other bulk parameters are consistent with zoning district regulations; 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 due to the inherent conditions of the site; and

WHEREAS, the applicant represents that the proposed use and bulk, which is consistent with the bulk for a conforming use, reflect the minimum waivers necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

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

WHEREAS, 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 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. 13BSA163M, dated June 27, 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 Assessment has reviewed the project for potential hazardous materials and noise impacts; and

WHEREAS, DEP recommends that an (E) Designation for hazardous materials be placed on the subject property, with the understanding that the New York City Office of Environmental Remediation may

request additional data collection; and

WHEREAS, DEP recommends that the (E) Designation also encompass noise to ensure tracking and enforcement of the noise attenuation requirements; and

WHEREAS, the Board has obtained (E) Designation number E-332 from the Department of City Planning; 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 M1-5 zoning district, the construction of a 12-story mixed residential/commercial building with ground floor retail use and 12 accessory parking spaces, which is contrary to ZR § 42-10; *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 March 10, 2014"—Thirteen (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 12 stories; 77 residential units; a total floor area of 141,815 sq. ft. (5.0 FAR); a maximum height of 155 feet; and a maximum of 12 accessory parking spaces;

THAT the development of the site is subject to the conditions of (E) Designation E-332;

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

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, March 11, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, March 11, 2014.

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Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.

