

27-14-BZ

CEQR No. 14-BSA-113M

APPLICANT – Sheldon Lobel, P.C., for 496 Broadway LLC., owner.

SUBJECT – Application February 7, 2014 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar, contrary to use regulations (§42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 496 Broadway, east side of Broadway between Broome Street and Spring Street, Block 483, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 8, 2014, acting on DOB Application No. 104812142, reads, in pertinent part:

ZR 42-14(D)(2)(b) – Proposed change of use below the 2nd floor from Use Group 16 (wholesale) to Use Group 6 (retail) is not permitted in M1-5B zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of an existing retail use (Use Group 6) on the first story and expansion of retail use (accessory storage) into the cellar, contrary to ZR § 42-14(D)(2)(b); and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in the *City Record*, with a continued hearing on July 22, 2014, and then to decision on August 19, 2014; and

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

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

WHEREAS, the subject site is located on the east side of Broadway between Broome Street and Spring Street, within an M1-5B zoning district, within the SoHo Cast Iron Historic District; and

WHEREAS, the site has 22.25 feet of frontage along Broadway and 2,237 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story building that was constructed in approximately 1866; the last-issued final certificate of occupancy (“CO”) for the building (No. 99266, issued October 7, 1991) authorizes wholesale storage (Use Group 16) in the cellar and on the first story, and joint living-work quarters for artists

(“JLWQA”)(Use Group 17D) on the second through fifth stories; and

WHEREAS, the Board has exercised jurisdiction over the site since February 13, 1990; on that date, under BSA Cal. No. 831-89-ALC, the Board granted an authorization pursuant to ZR § 72-30 to exclude 7,204 sq. ft. of floor area from the computation of the conversion contribution to be paid as required under ZR § 15-50 (Relocation Incentive Contribution); the grant accompanied the conversion of the second through fifth stories of the building from manufacturing use to JLWQA; and

WHEREAS, the applicant notes that the first story of the building has been occupied by various commercial uses since at least 1980 and that, since around 2004, the uses have included clothing and jewelry stores; at present, the first story is occupied by a retail store; and

WHEREAS, accordingly, the applicant seeks legalization of the existing retail use (Use Group 6); in addition, the applicant seeks to use a portion of the cellar as accessory storage for the first story retail use; and

WHEREAS, specifically, the applicant proposes to classify 2,133 sq. ft. of floor area on the first story and 81 sq. ft. of floor space in the cellar as Use Group 6 retail; the applicant notes that the majority of the cellar will remain, per CO No. 99266, Use Group 16 retail storage; and

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

WHEREAS, the applicant states that, per ZR § 72-21(a), 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 existing building is obsolete for manufacturing use; (2) the site is too small and too narrow to accommodate floorplates for a manufacturing use; and (3) the site is constrained by its location within a historic district; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant states that the building lacks a loading berth and has no space to install one; additionally, the building has limited access, with only two pedestrian-sized doors, one of which is devoted to the JLWQA units on the upper stories, and no elevator; and

WHEREAS, the applicant states the site’s 2,133 sq. ft. of lot area and 22.25-ft. width is far too small to accommodate floorplates that would make the building marketable for a conforming use; and

WHEREAS, the applicant states that 80 percent of the 280 buildings within a 1,000-ft. radius of the site have more lot area than the subject site; in addition, the site is the narrowest site on the entire block and narrower than 90 percent of the 280 buildings within a 1,000-ft. radius of the site; as such, the applicant asserts that its small size

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and narrow width are unique burdens in the surrounding area; and

WHEREAS, the applicant also notes that only 26 buildings (nine percent) within the study area have both less lot area and a narrower width than the site, and that 24 of the 26 such buildings have Use Group 6 uses on the first story¹; and

WHEREAS, finally, the applicant asserts that the site's location within the SoHo Cast Iron Historic District, though not unique, contributes to the practical difficulties associated with developing the first story and cellar with a conforming use; and

WHEREAS, specifically, the applicant states that any enlargement, significant alteration or demolition and reconstruction is subject to the approval of the Landmarks Preservation Commission ("LPC"); as such, there are premium construction costs for materials, consulting, and permitting, which cannot be recouped at this site due to the undesirability of the building for a manufacturing use; and

WHEREAS, the Board agrees that the 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, the applicant provided a financial analysis for (1) a conforming scenario with permitted uses (Use Groups 7, 9, 11, 16, 17A, 17B, 17C, and 17E); and (2) the proposal; and

WHEREAS, the study concluded that only the proposal would provide a reasonable return; 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 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 predominance of commercial and manufacturing uses; ground floor commercial use is

particularly well-established, with every ground floor of every building fronting on Broadway between Spring Street and Broome Street (22 buildings) occupied by ground floor commercial use; and

WHEREAS, the applicant states that the proposed Use Group 6 retail is entirely consistent with the character of the neighborhood; and

WHEREAS, the applicant also notes that, historically, the area has been characterized by ground floor commercial use, as evidenced by the LPC designation report for the SoHo Cast Iron Historic District; and

WHEREAS, LPC approved the changes legalized under this application by Certificate of Appropriateness, dated May 9, 2008; 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 notes that no changes to the bulk of the building are proposed; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; 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 a Type I 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. 14-BSA-113M, dated February 7, 2014; 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.

1 The applicant notes that of the 24 buildings, seven have Use Group 6 uses authorized by a CO, ten do not have a CO, and seven have Use Group 6 contrary to the CO.

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Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I 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 SoHo Cast Iron Historic District, the legalization of an existing retail use (Use Group 6) on the first story and expansion of retail use (accessory storage) into the cellar, contrary to ZR § 42-14(D)(2)(b), *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 February 7, 2014"- eleven (11) sheets; and *on further condition*:

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 the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB 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, August 19, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, August 19, 2014.

Printed in Bulletin Nos. 32-34, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

