

175-14-BZ

CEQR #15-BSA-033M

APPLICANT – Greenberg Traurig, LLP, for 1162 Broadway LLC, owner.

SUBJECT – Application July 24, 2014 – Variance (§72-21) proposed the construction a new 14-story hotel building seeking waivers for setback and side yard requirements, located within a M1-6 zoning district in a historic district.

PREMISES AFFECTED – 1162 Broadway, east side of Broadway between W 27th Street and W 28th Street, Block 829, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 9, 2014, acting on DOB Application No. 122013908, reads in pertinent part:

1. Proposed base height exceeds six stories, contrary to ZR 43-43;
2. No initial setback provided, contrary to ZR 43-43;
3. Open areas extending along each side lot line less than eight feet in width, contrary to ZR 43-25; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-6 zoning district, within the Madison Square North Historic District, the construction of a 14-story hotel (Use Group 5) that does not comply with the zoning requirements for height and setback and side yards, contrary to ZR §§ 43-25 and 43-43; and

WHEREAS, a public hearing was held on this application on January 27, 2015, after due notice by publication in the *City Record*, with a continued hearing on March 3, 2015, and then to decision on March 24, 2015; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a trapezoidal interior lot located on the east side of Broadway, between West 27th Street and West 28th Street, within an M1-6 zoning district, within the Madison Square North Historic District; and

WHEREAS, the site has 26.44 feet of frontage along Broadway, a lot depth that varies from 95.98 feet to 105.48 feet, and 2,475 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building (Use Group 6) with approximately 4,950 sq. ft. of floor area (2.0 FAR); and

WHEREAS, the applicant proposes to construct a 14-story hotel with 24,677 sq. ft. of floor area (10.0 FAR), a building height of 150'-0" without setbacks, and, beginning at the second story at 20'-0" above curb level, open areas with widths of 2'-4 1/4" along the northern and southern side lot lines at the street wall; such open areas will increase in depth—cant away from Broadway—as they extend upward, from a depth of 0'-1 3/4" at the second story to a depth of 7'-2 1/2" at the fourteenth story; and

WHEREAS, in order to construct the building as proposed, the applicant seeks the following waivers: (1) open area extending along a side lot line (per ZR § 43-25, an open area extending along a side lot line shall have a minimum width of 8'-0"); and (2) height and setback (per ZR § 43-43, the maximum base height is 85'-0" or six stories, whichever is less; above that base, a setback with a minimum depth of 15'-0" is required and a sky-exposure plane of 5.6 to 1 must be maintained above the maximum base height); and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions that create practical difficulties and unnecessary hardships in developing the site in compliance with applicable regulations: (1) narrow width of the site; (2) the site's small size; and (3) the classification of the existing building at the site as a "no style" building, according to the historic district designation report issued by the Landmarks Preservation Commission ("LPC") for the Madison Square North Historic District; and

WHEREAS, the applicant states that the site's narrow width (less than 25'-0") and small size (less than 2,500 sq. ft. of lot area) are unique among 162 sites within the study area (the subject M1-6 zoning district between Fifth Avenue and Sixth Avenue, extending from West 23rd Street to West 31st Street); and

WHEREAS, the applicant represents that of those 162 sites, only five other sites (tax lots) are as small and narrow as the subject site and are also: (1) located within the historic district; and (2) occupied by a building classified as a "no style" or non-contributing building (sites occupied by contributing buildings were not considered comparably soft sites because, according to the applicant, LPC is unlikely to allow contributing buildings to be demolished or substantially enlarged); and

WHEREAS, the applicant asserts that unlike sites occupied by contributing buildings, LPC will allow the demolition of a "no style" building within a historic district; thus, the applicant contends that the subject site is more analogous to a vacant site than a site occupied by an underbuilt but contributing building; and

WHEREAS, the applicant also states that of the five sites that are similar to the subject site in terms of size, width, and lack of architectural significance, two

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sites have four or more above-grade stories; in contrast, the subject site has a building with only two stories; thus, two of five sites similar to the subject site are significantly more developed than the subject site; and

WHEREAS, the applicant concludes that because the site has similar characteristics (size, width, lack of architectural significance, and underdevelopment) to only three other sites among 162 sites in the study area, it is unique; and

WHEREAS, the applicant asserts that the site's unique characteristics create unnecessary hardships in developing the site as-of-right; and

WHEREAS, specifically, the applicant states that due to the small and narrow shape of the site, a complying building—that is, a building with a 15-foot setback beginning at 85 feet—would have a maximum floorplate above the base of 1,362 sq. ft.; in addition, a complying building would rise 16 stories in order to utilize the 10.0 FAR permitted in the subject M1-6 district; as such, the construction costs for the complying building would be higher than for the proposed; and

WHEREAS, the applicant also states that building core (elevator shafts and stairwells) will occupy approximately 600 sq. ft. of the 1,362 sq. ft., leaving only 762 sq. ft. for hotel rooms in each of the eight stories above the maximum base height, resulting in three hotel rooms per story above the base and reducing the total number of hotel rooms to 50 (the proposal reflects 52 hotel rooms); accordingly, in addition to higher construction costs, the complying building would yield fewer hotel rooms; and

WHEREAS, as to the open area waiver, the applicant contends that it allows the creation of a significant architectural feature that will give the building a distinctive and recognizable façade, which, the applicant contends, will distinguish the proposed building, which will be occupied as a hotel, from nearby hotels; and

WHEREAS, at hearing, the Board noted that the buildings adjacent to the site are comparatively low-rise and therefore likely to be enlarged or replaced with taller buildings; as such, the Board questioned whether the distinctive architectural feature created by the waiver of ZR § 43-25 would be diminished in significance by higher abutting building walls; and

WHEREAS, in response, the applicant stated that the proposed building was designed with the understanding that the adjacent buildings were underdeveloped and that one or both could rise to a height similar to that proposed; further, the applicant asserted that the façade would remain distinctive even if both buildings were enlarged, because the use of light brick in the sloping wall and dark painted metal bays creates a contrast that is evident irrespective of adjacent building walls; the applicant also notes that neither

building would be permitted to match the street wall of the proposed building as-of-right; finally, the applicant observes that any enlargement or redevelopment of the adjacent buildings is subject to the approval of LPC; and

WHEREAS, based upon the above, the Board finds that the site's narrow width, small size, and existing, two-story "no-style" building, in the aggregate, are unique physical conditions that create unnecessary hardships in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant contends that, per ZR § 72-21(b), there is no reasonable possibility of development of the site in compliance with the Zoning Resolution; and

WHEREAS, in addition to the proposal, the applicant studied the feasibility of constructing an as-of-right hotel at the site; as noted above, the as-of-right hotel would be 16 stories tall with a 15'-0" setback at the seventh story (resulting in increased construction costs) and have 50 hotel rooms (resulting in a lower operating income for the hotel); and

WHEREAS, thus, the applicant contends that only the proposal would realize a reasonable rate of return on investment; 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 compliance with applicable zoning requirements would 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 surrounding neighborhood is characterized by medium- and high-density commercial buildings; uses include wholesale establishments, offices, eating and drinking establishments, and hotels; and

WHEREAS, as to adjacent uses, the applicant states that five-story office and retail buildings flank the site to the north and south; directly east of the site is an eight-story mixed residential and commercial building; west of the site, across Broadway, is a large office building with various retail and wholesale establishments at the ground floor; and

WHEREAS, the applicant states that the proposed hotel use is as-of-right in the subject M1-6 district and is entirely compatible with nearby existing uses; and

WHEREAS, turning to bulk, the applicant notes that, aside from the requested waivers, the proposal complies in all respects with the M1-6 bulk regulations, including building height and FAR; and

WHEREAS, the applicant contends that the requested waivers are essential to creating a building that

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complements the distinctive rowhouses, Art Deco-style towers, and loft buildings that characterize the Madison Square North Historic District, in that such buildings typically rise without setback and contain façade articulations and decorative elements; and

WHEREAS, LPC issued a Certificate of Appropriateness for the proposal dated, September 8, 2014; 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 due to the peculiarities of the site; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with 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 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 EAS CEQR No. 15-BSA-033M, dated November 4, 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; and

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 to permit, on a site within an M1-6 zoning district, within the Madison Square North Historic District, the construction of a 14-story hotel (Use Group 5) that does not comply with the zoning requirements for height and setback and side yards, contrary to ZR §§ 43-25 and 43-43; *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 20, 2015”– twelve (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 14 stories, a maximum of 24,677 sq. ft. of floor area (9.97 FAR), a maximum building height of 150’-0” without setbacks, and, beginning at the second story at 20’-0” above curb level, open areas with widths of 2’-4¼” along the northern and southern side lot lines at the street wall, as reflected on the BSA-approved drawings;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by March 24, 2019;

THAT the approved plans shall 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 24, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, March 24, 2015.

Printed in Bulletin Nos. 13-14, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

