

318-13-BZ

CEQR #14-BSA-080M

APPLICANT – Bryan Cave LLP, for TJD 21 LLC, owners.

SUBJECT – Application December 13, 2013 – Variance (§72-21) to permit a five-story building containing retail and residential use, contrary to use regulations (§44-00). M1-5B zoning district.

PREMISES AFFECTED – 74 Grand Street, North side of Grand Street, 25 feet east of Wooster Street. Block 425, Lot 60, 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 Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated December 2, 2013, acting on DOB Application No. 121784701, reads, in pertinent part:

Use Group 2 is not permitted in M1-5B zoning district pursuant to ZR 42-10;

Use Group 6 is not permitted below the floor level of the 2nd story in M1-5B districts pursuant to ZR 42-14(D)(2)(b); 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 construction of a six-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor and cellar retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in the *City Record*, with a continued hearing on April 8, 2014, and then to decision on May 6, 2014; and

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

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

WHEREAS, the subject site is located on the north side of Grand Street between Wooster Street and Greene Street, within an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site has 25 feet of frontage along Grand Street, a lot depth of 100 feet, and 2,500 sq. ft. of lot area; and

WHEREAS, the site is currently vacant but was previously occupied by a five-story, Neo-Grec-style, cast-iron loft building (the “Historic Building”) that was

constructed in 1886 and was described by the Landmarks Preservation Commission (“LPC”) as contributing to the special architectural and historic character of the SoHo Cast Iron Historic District; and

WHEREAS, the applicant represents that the Historic Building was demolished following an emergency declaration issued by DOB in 2009; LPC assented to the demolition on condition that the façade and other architecturally-distinct components be preserved and incorporated (in their original configuration) into any new building at the site; and

WHEREAS, the applicant represents that the proposed mixed residential (Use Group 2) and commercial (Use Group 6) building, which will incorporate the Historic Building façade, will have a total floor area of 12,493 sq. ft. (4.98 FAR), a residential floor area of 10,807.3 sq. ft. (4.3 FAR), a commercial floor area of 1,686 sq. ft. (0.68 FAR), a street wall height of 78’-7”, a building height of 90’-9”, and a rear yard depth of 20 feet beginning at the second story; the applicant notes that the cellar will include retail space, mechanical rooms, and accessory storage for the residences; the first story will be occupied by retail space and the residential lobby; and the second through sixth stories will be occupied by a total of four dwelling units; and

WHEREAS, because Use Group 2 is not permitted and Use Group 6 is not permitted below the floor level of the second story within the subject M1-5B zoning district, the applicant seeks use variances; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the history of development at the site, namely its Historic Building and the LPC requirement that the façade of the Historic Building be restored and incorporated into any redevelopment of the site; (2) the narrow lot width and small lot area of the site; and (3) the condition of the site’s soil; and

WHEREAS, the applicant contends that the Historic Building at the site and the LPC requirement to restore the building’s façade are unique conditions that create an unnecessary hardship in development the site with a conforming use; and

WHEREAS, as noted above, the applicant states that from 1886 until 2009, the site was occupied by the Historic Building; in 2009, DOB determined that—due in part to excavation at an adjacent site (72 Grand Street)—the building was approximately 25 inches out of alignment and in danger of collapse; accordingly, DOB ordered the owner to demolish the building; and

WHEREAS, the applicant states that subsequent to DOB’s order, on November 23, 2009, the owner entered into an agreement with LPC whereby it was permitted to demolish the Historic Building provided that the cast-iron façade was “fully surveyed and catalogued, disassembled and stored in a secure and safe manner for

318-13-BZ
CEQR #14-BSA-080M

future reconstruction”; and

WHEREAS, in particular, the applicant states that LPC mandated that the following Historic Building elements be preserved “for use in conjunction with future construction at the site”: the cast-iron on the Grand Street façade; window shutters on the third floor at the rear of the building; the barrel vault cast-iron skylight at the rear of the first floor; and sidewalk cast iron vault lites; and

WHEREAS, the applicant represents that the preservation and incorporation of these elements into a modern building significantly increased the construction costs for the proposed building; and

WHEREAS, further, the applicant states that because the floors were required to line up with the windows of the Historic Building’s façade, unusually high floor-to-floor heights are required (18’-8” at the first story and between 13’-7” and 12’-6” on the second through fifth stories), which reduces the number of stories in the building, which in turn reduces the amount of marketable space; the applicant notes that the sixth story is above the historic façade and set back; therefore, it was not constrained by the façade; and

WHEREAS, the applicant contends that the site’s lot area of 2,500 sq. ft. and lot width of 25 feet are unique among vacant lots in the surrounding area; and

WHEREAS, in support of this statement, the applicant submitted its study of the sites within the M1-5A and M1-5B zoning districts spanning from the south side of Houston Street at the northern boundary, by Broadway to the east, Avenue of the Americas to the west, and Canal Street to the south; based on the study, there are only eight vacant sites, three of which are surface parking lots, four of which have a lot width of less than 30 feet, and three of which have a lot area of 2,500 sq. ft. or less; of the latter three, two are corner lots; if only a 400-foot radius is considered, there are only four vacant sites (other than the subject site), only two of which have lot widths of less than 30 feet; thus, the applicant asserts that its site has a unique width and size when compared to other vacant sites; and

WHEREAS, the applicant asserts that the site’s narrow width and small size create a practical difficulty in developing the site for a conforming use; specifically, the applicant states that such characteristics result in an inherently inefficient and unmarketable floorplate because a disproportionate share (33 percent) of a conforming building at the site would be devoted to building core; and

WHEREAS, to support this assertion, the applicant examined the feasibility of a conforming hotel (Use Group 5) at the site; according to the hotel plans, the stairs, elevator, and public corridor required under the Building Code would be sufficient for a hotel with nearly twice as much floorplate as is possible at this narrow,

small site; such floorplates would yield no more than three rooms per story; and

WHEREAS, likewise, the applicant states that other conforming commercial and manufacturing uses—those listed in Use Group 7, 9, 11, 16, and 17 (which include business schools, gymnasia, printing establishments, and carpentry workshops)—are likely to locate in such a small, inefficient space; and

WHEREAS, accordingly, the applicant concludes that conforming uses are infeasible at the site, due to the inefficient building that results from its narrow width and small size; and

WHEREAS, the applicant also contends that its soil conditions impose an additional unique hardship; and

WHEREAS, in support of this contention, the applicant provided a geotechnical report, which concluded that a deep foundation system would be necessary rather than a less-expensive spread footing due to the presence of soil with weak and unstable bearing capacity; likewise, the site’s soil requires more expensive structural components to resist seismic loads, all at premium costs; and

WHEREAS, finally, the applicant asserts that, in the aggregate, the site’s unique conditions make a conforming development at the site infeasible; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and 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, in particular, in addition to the proposal, the applicant examined the economic feasibility of an as-of-right 4.68 FAR hotel scenario (11 hotel rooms); and

WHEREAS, the applicant concluded that the as-of-right scenario resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return, making it economically viable; 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 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

318-13-BZ
CEQR #14-BSA-080M

immediate area is characterized by a mix of medium-density residential and commercial uses, with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant represents that more than 50 percent of the buildings within 400 feet of the site are either residential, mixed residential and commercial, or Joint Living-Work Quarters for Artists; thus, the applicant asserts that the existing context includes a significant amount of residential use; and

WHEREAS, the applicant also states that the ground floor Use Group 6 use will be consistent with nearby ground floor uses, which are overwhelmingly retail, including clothing stores, art galleries, and home furnishings stores; and

WHEREAS, the applicant also notes that the proposal will be a natural complement to developments on the corner of Wooster Street and Grand Street and on West Broadway, which were recently approved by CPC; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of six dwelling units and ground floor retail will not impact nearby conforming uses; and

WHEREAS, further, the Board notes that the compatibility of residences in the subject M1-5B zoning district within the SoHo Cast Iron Historic District is acknowledged in ZR § 74-712(a) (*Developments in Historic Districts*), a City Planning Commission special permit that would allow a residence of a similar size but for the fact that the site became vacant too recently; a precondition for that special permit is that the site must have been vacant as of December 15, 2003, and, as noted above, the subject site became vacant upon the demolition of the Historic Building in 2010; and

WHEREAS, as to bulk, the applicant states that the building's street wall height of 78'-7" and building height of 90'-9" are both comparable to buildings in the immediate vicinity, and similar to the Historic Building, which occupied the site for more than 100 years; and

WHEREAS, at hearing, the Board expressed concern regarding the proposed rear yard depth of 20'-0"; the Board noted that although there are no bulk regulations for residential buildings in manufacturing districts, the Board has historically required a rear yard depth of 30'-0", which is consistent with the requirement in zoning districts where residential use is permitted as-of-right; and

WHEREAS, in response, the applicant contends that a rear yard depth of 20'-0" is necessary and appropriate in this case because the development is not viable with a rear yard depth of 30'-0"; the applicant asserts that the stair and elevator cores and mechanical rooms would have to be reconfigured to accommodate a rear yard depth of 30'-0", resulting in a reduction of the size of the dwelling units and the retail space; and

WHEREAS, the applicant also notes that the building cannot be redesigned to capture more floor area; due to the unusually high floor-to-floor heights, constraints owing to the requirement to incorporate the Historic Building façade, and the LPC requirement to set back at the sixth story in order to reveal the cornice, a substantial amount of floor area is lost even with a rear yard depth of 20'-0" and it cannot be recouped; likewise, the mezzanine level cannot be extended to provide more usable floor area without being reclassified as a story, triggering the Building Code requirement to provide a second fire stair; and

WHEREAS, in support of the applicant's contention that the building cannot provide a rear yard depth of greater than 20'-0", the applicant submitted a feasibility study of a building with a rear yard depth of 30'-0"; based on the study, the building with the rear yard depth of 30'-0" is not a viable alternative to the proposal; and

WHEREAS, the applicant asserts that a rear yard depth of 20'-0" is typical for buildings in the area and submitted an Open Space Study, which reflects that of the sites occupied by residential uses on the block, portions of only four building out of ten have back-to-back rear yard depths in excess of 20'-0" and those within 100'-0" of the corner (which the subject site is) have rear yard depths ranging from 15'-0" to 21'-6"; and

WHEREAS, the applicant also notes that a rear yard depth of 20'-0" is an improvement over the Historic Building, which also had dwelling units but had a rear yard depth of only 15'-0", and the proposed windows, both within the historic façade and at the rear, are well in excess of the sizes required under the Multiple Dwelling Law; therefore, the applicant contends that with regard to light and ventilation, the proposal is both a substantial improvement over a historic condition and more than adequate by modern standards; further, the initial proposal included rear balconies, which would have further reduced the depth of the rear yard—and light and ventilation—to the extent of their projection; at the Board's direction, the balconies were eliminated; and

WHEREAS, finally, the applicant states that none of the dwelling units will rely solely on the rear yard for light and ventilation since the units are floor-through and thus also have windows opening upon on Grand Street; and

WHEREAS, the Board is persuaded that a rear yard depth of 20'-0" is appropriate given the site's unique physical conditions; and

WHEREAS, LPC has approved the proposal by Certificate of Appropriateness, dated August 13, 2013; 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

318-13-BZ
CEQR #14-BSA-080M

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 a function of the site's history of development, size and narrowness, and the limited economic potential of conforming uses on the lot; and

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

WHEREAS, accordingly, 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 Type 1 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-080M, dated May 1, 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, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed the applicant's February 2013 Phase I report and that, due to site specific circumstances, DEP recommends that the applicant implement a DEP-approved Phase II Investigative Protocol prior to the issuance of permits by DOB relating to the issuance of soil disturbance; 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 1 Negative

A true copy of resolution adopted by the Board of Standards and Appeals, May 6, 2014.

Printed in Bulletin No. 19, Vol. 99.

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

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 construction of a six-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor and cellar retail, contrary to ZR §§ 42-10 and 42-14, *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 April 17, 2014"- Sixteen (16) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum total floor area of 12,493 sq. ft. (4.98 FAR), a residential floor area of 10,807.3 sq. ft. (4.3 FAR), four dwelling units, a commercial floor area of 1,686 sq. ft. (0.68 FAR), a maximum street wall height of 78'-7", a maximum building height of 90'-9", and a minimum rear yard depth of 20 feet beginning at the second story;

THAT the applicant will implement a DEP-approved Phase II Investigation Protocol and, should the test reveal the need for hazardous materials remediation, the applicant will submit a remedial action plan and health and safety plan to be approved by DEP prior to the issuance of any permit by DOB that allows soil disturbance, and that the remedial action plan and health and safety plan shall be implemented as part of construction;

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 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, May 6, 2014.

