

43-12-BZ

CEQR #12-BSA-080M

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, 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 decisions of the Borough Commissioner of the Department of Buildings, dated February 9, 2012 and January 6, 2014, acting on Department of Buildings Application No. 101569269, read, in pertinent part:

ZR 42-00 – Proposed Residential Use (Use Group 2) contrary to ZR 42-00 and not permitted in an M1-5B district.

ZR 42-14(d)(2)(b) – Proposed Use Group 6 Commercial use below the second story level of the building is not permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the NoHo Historic District Extension, the construction of an 11-story mixed residential and commercial building (Use Groups 2 and 6), contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012 and January 14, 2014, and then to decision on February 11, 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, recommended approval of the original iteration of the proposal and its Landmarks Committee recommends approval of the Landmarks application, which reflects the current variance proposal; and

WHEREAS, the subject site is a through lot with frontage on Great Jones Street and Bond Street, between Lafayette Street and the Bowery, within an M1-5B zoning district within the NoHo Historic District Extension; and

WHEREAS, the site has 25'-8" of frontage along

Great Jones Street and along Bond Street, a depth of 200'-2", and a lot area of 5,134 sq. ft.; and

WHEREAS, the site is occupied by a vacant 13-story superstructure set back 19 feet from the Great Jones Street frontage (the "Hotel Building") and a partially demolished two-story unoccupied building fronting on Bond Street; and

WHEREAS, the applicant represents that the 13-story superstructure was constructed pursuant to lawfully-issued permits which were issued prior to the May 12, 2008 designation of the NoHo Historic District Extension, with plans to be occupied by a restaurant on the ground floor and a hotel above; and

WHEREAS, the Hotel Building was to include a 13-story portion on Great Jones Street (with a height of 173'-4" and 5.0 FAR), set back 19 feet from the Great Jones Street frontage, and a one-story base extending towards Bond Street, with a plaza between it and the Bond Street frontage, with a depth of 30 feet; and

WHEREAS, the permits for the building facades were issued after the historic designation and, thus were subject to LPC approval, which was obtained in 2009; and

WHEREAS, the applicant states that construction was halted in 2009 and it seeks to modify the existing superstructure to accommodate residential, rather than hotel use, as the hotel use is not viable; and

WHEREAS, the applicant initially sought to retain the 13-story height (of 149'-11" with a mechanical floor up to a height of 163'-4"), to increase the floor area to 5.99 FAR, and to not return to the Landmarks Preservation Commission (LPC) for approval of any changes; and

WHEREAS, the Board directed the applicant to reduce the height and the 5.99 FAR request to be consistent with the 5.0 FAR permitted in the district for a conforming use and noted that LPC approval is required; and

WHEREAS, accordingly, the applicant proposed a building built to the Great Jones Street streetline, which would fill in the open space between the Hotel Building and the street line, with 5.0 FAR, a six-story streetwall with a setback of 19'-3", then at a height of 117 feet a setback of 23'-7" before reaching a height of 128 feet on Great Jones Street; additionally, the applicant also proposed a four-story townhouse on Bond Street; and

WHEREAS, the applicant represents that it returned to LPC with the noted proposal and LPC required certain design changes, which resulted in the current proposal that includes (1) replacing the Bond Street townhouse with a residential entry and screen wall, (2) increasing the height of the Great Jones Street streetwall from 73 feet to 83'-11", (3) increasing the roof height by approximately 2'-0" to 130'-0" and the bulkhead by approximately 3'-6", (4) eliminating the 11th floor setback on Great Jones Street, (5) shifting the townhouse bulk onto the tower, and (6) increasing the

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depth of the Bond Street building by approximately 10'-0"; and

WHEREAS, the applicant represents that LPC's design changes reflect its interest in matching the heights of adjacent buildings without setback and its belief that there is not a context for a Bond Street townhouse; and

WHEREAS, the current proposal is for a building with a floor area of 25,533 sq. ft. (4.97 FAR), which includes an 11-story building with six residential units on the first through 11th floors and commercial use on the cellar and ground floor levels fronting on Great Jones Street; and

WHEREAS, the applicant represents that the proposed 11-story mixed residential (Use Group 2) and commercial (Use Group 6) building, will have a total floor area of 25,533 sq. ft. (4.97 FAR), a residential floor area of 24,782 sq. ft. (4.82 FAR), a commercial floor area of 751 sq. ft. (0.15 FAR), a street wall height of 83'-11" at the seventh story, a building height of 130 feet (excluding the bulkhead), and an open space at the second story; the applicant notes that the cellar will include commercial space, mechanical rooms, and accessory storage for the residences; the Great Jones Street first story will be occupied by commercial space and the Bond Street first story will be occupied by the residential entrance; and the second through 11th stories will be occupied by a total of six dwelling units; and

WHEREAS, the building entrance will be through Bond Street, which includes a screen and rooftop open space above the one-story entrance; 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 on the site; and (2) the narrow through lot condition; and

WHEREAS, the applicant represents that in 1820, a three-story rowhouse was built at 22 Bond Street with a stable in the back fronting on Great Jones Street, which was the model for other homes on the block; and

WHEREAS, the applicant represents that at the end of the 19th Century, the Great Jones Street stable was replaced with a five-story building occupied by manufacturing use; the three upper stories were removed in 1939 when an auto repair business took over the site and the Bond Street building was used, unchanged, by various businesses; and

WHEREAS, finally, the applicant represents that in the 1990s, the Bond Street building was partially demolished and renovated and the two-story Great Jones Street building was demolished; and

WHEREAS, the applicant states that since the time the larger former Great Jones Street building was partially demolished in the late 1930s and the Bond Street building was retained, there were limited development options for the site; and

WHEREAS, the applicant asserts that the limited usefulness of the site during the past 200 years supports the conclusion that there is hardship inherent in the site; and

WHEREAS, the applicant states that the site's configuration, with a width of 25'-8" and a depth of approximately 200 feet is a historic condition, which is unique in the area where other such lots, first created in the early 19th Century, have been subdivided, which allowed for separate development on Great Jones Street and Bond Street; and

WHEREAS, the applicant represents that the narrow through lot configuration has existed for more than 200 years; and

WHEREAS, the applicant states that the disproportionate narrowness in relation to depth leads to significant building inefficiencies due to the fact that the options for development are either to construct two essentially separate buildings with frontage on each of the streets or to construct one building at one of the frontages or set back from the street, which would have considerable depth but access to windows only on the narrow north and south facades; and

WHEREAS, the applicant has identified \$3 million in construction premiums associated with constructing on a site of this configuration when compared to a more conventional 50'-0" by 100'-0" lot, due primarily to the significant extent of surface area of the façade and requirement for redundancies such as stairs and elevators and other infrastructure; and

WHEREAS, the applicant asserts that the unique configuration, namely its depth in relation to its street frontage, also leads to constraints related to access for a conforming use; and

WHEREAS, the applicant asserts that the irregular configuration of the site has led to the retention of the small building on Bond Street, which limited the ability to maximize opportunity to build a larger commercial building in the late 1800s on Great Jones Street; and

WHEREAS, as to uniqueness, the applicant analyzed the surrounding area and found that the site is the only such narrow through lot in the M1-5B zoning district north of Houston Street and, and only the second in the surrounding forty blocks, bounded by Houston Street, First Avenue, St. Marks Place, and LaGuardia Place with such configuration; and

WHEREAS, the Board agrees that the noted 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-

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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, in particular, the applicant initially examined the economic feasibility of: (1) an as-of-right hotel and restaurant scenario; (2) an as-of-right hotel and restaurant on a lot that is 50'-0" by 100'-0" and (3) the residential building with an 11-story tower and four-story townhouse; and

WHEREAS, the applicant concluded that only the residential proposal and as-of-right building on the 50'-0" by 100'-0" lot would realize a reasonable rate of return; thus, the applicant represents that the residential proposal is the only economically viable scenario on the 25'-8" by 200'-2" lot; and

WHEREAS, after the applicant had completed its process at LPC including the redesign of its building to obtain a Certificate of Appropriateness, the Board directed the applicant to re-examine the financial analysis in light of the changes associated with the LPC-approved design which eliminated the townhouse and added bulk to the tower; and

WHEREAS, the applicant submitted a supplemental financial analysis which reflects that the rate of return for the current proposal is consistent with that of the prior proposal; thus, the financial feasibility is not implicated by the design change; 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, as to use, the applicant states that the immediate area is characterized by a mix of medium-density residential and commercial uses, with some remaining manufacturing/industrial uses and that the introduction of six residential units and 751 sq. ft. of first floor commercial space (and 3,494 sq. ft. in the cellar) will not disrupt the neighborhood character; and

WHEREAS, the applicant states that many of the buildings on both streets are occupied, at least in part by commercial uses and at least 28 out of the 38 buildings fronting on Great Jones Street or Bond Street have some residential occupants either as Joint Living Work Quarters for Artists or pursuant to use variances; and

WHEREAS, the applicant notes that the subject M1-5B zoning district is a two-block wide strip

centered along Lafayette Street from Astor Place to Bleecker and Houston streets; and South of Houston Street the district widens to the west where it abuts an M1-5A district at Mercer Street and a block east of the site is a C6-1 district at the Bowery, a block to the south and west are C6-2 zoning district; and

WHEREAS, the applicant asserts that all of the C6 districts permit residential, commercial, and community facility uses as-of-right; and

WHEREAS, the applicant asserts that the proposed use is more compatible with the surrounding area than the as-of-right hotel use; and

WHEREAS, as to bulk, the applicant notes that the proposed 4.97 FAR complies with the bulk regulations for a conforming use in the M1-5B zoning district; and

WHEREAS, the applicant states that the Bond Street frontage is between a six-story building to the east and a seven-story building to the west and the Great Jones Street frontage is between a six-story building to the east and a vacant lot, with an approved variance for a seven-story mixed use building to the west (BSA Cal. No. 64-06-BZ); and

WHEREAS, the applicant states that the north side of Great Jones Street is occupied by a parking lot and a fire station and the south side of Great Jones Street is characterized by three- to seven-story, mostly masonry buildings; Bond Street includes a similar mix of buildings; and

WHEREAS, the applicant states that the proposed building will reestablish a consistent street wall on Great Jones Street with the addition of a six-story extension to fill the 19-ft. setback of the existing superstructure; and

WHEREAS, the applicant represents that, per LPC's request, the streetwall addition will match the adjacent building heights; and

WHEREAS, the applicant also represents that it will install a mural on its highly-visible western wall; and

WHEREAS, the applicant asserts that the proposed matching streetwall of 83'-11" and reduction in the overall height of the building from 149'-11" (13 stories) to 130'-0" (11 stories) is significantly more compatible with the surrounding area than the Hotel Building, which sets back from the street and is not harmonious with the surrounding built context; and

WHEREAS, the applicant also submitted a height map which reflects that the majority of buildings on the subject block have heights of between five and eight stories with one other 11 or more story building with frontage on Bond Street; and

WHEREAS, additionally, the applicant notes that the proposed building height is approximately 30 feet less, including mechanicals, than that of the existing as of right Hotel Building; and

WHEREAS, the Board notes that its initial

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recommendation was for a building that included a second setback at 117 feet and a total height of 128 feet, which it found to be more consistent with residential contextual building envelopes as well as the building envelopes approved for other recent variances on Bond Street and Lafayette Street; and

WHEREAS, the Board initially questioned whether a height of 130 feet with such great visibility—and particularly without the second setback—would be appropriate in the surrounding context; and

WHEREAS, however, the Board recognizes that LPC supports the proposed 130-ft. height in the context of a significant improvement on the existing Hotel Building and, thus, concludes that only under those circumstances does it accept the 130-ft. height; and

WHEREAS, LPC approved of the proposed building by Certificate of Appropriateness dated December 9, 2013; 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 commercial use will not impact nearby conforming uses; and

WHEREAS, the Board notes that some ground floor Use Group 6 is contemplated in the M1-5B district, as evidenced by the existence of ZR § 74-781, a City Planning Commission special permit, which allows modification of the use regulations set forth in ZR § 42-14; and

WHEREAS, the applicant proposes that the entrance to the commercial space is on the Great Jones Street frontage, which has a context for such first floor use; 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 a function of the site's historic configuration, 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 a Type I action pursuant to 6 NYCRR, Part 617 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. 12-BSA-080M, dated February 10, 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 and accepted the March 2013 Site Investigation Work Plan, proposed Phase II air testing protocol, and the April 2013 site-specific Health and Safety Plan; and

WHEREAS, DEP stated that the Phase II air testing can be conducted after construction of the proposed project; 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 and grants a variance, to permit, within an M1-5B zoning district within the NoHo Historic District Extension, the construction of an 11-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor 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 January 6, 2014"- (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a total floor area of 25,533 sq. ft. (4.97 FAR), a residential floor area of 24,782 sq. ft. (4.82 FAR), a commercial floor area of 751 sq. ft. (0.15 FAR) on the first floor, a maximum of 11 stories on Great Jones Street, a street wall height of 83'-11" before a setback of 15'-0", a total height of 130'-0" (excluding the bulkhead) and a one-story with additional rooftop screenwall on Bond Street, as reflected on the BSA-approved plans;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Phase II air testing report and other remedial actions or measures required based on the testing results;

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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, February 11, 2014.

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

Printed in Bulletin No. 7, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

