

**\*CORRECTION**

**The resolution adopted on February 11, 2014, under Calendar No. 239-02-BZ and printed in Volume 99, Bulletin No. 7, is hereby corrected to read as follows:**

**239-02-BZ**

**APPLICANT** – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.

**SUBJECT** – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.

**PREMISES AFFECTED** – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, 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 Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, an amendment, and an extension of term for an eating and drinking establishment (Use Group 6), which expired on December 12, 2012; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in the *City Record*, with continued hearings on March 23, 2013, June 11, 2013, September 24, 2013, December 10, 2013, 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, recommends denial of the requested extension of term until (1) the impacts on conforming uses are mitigated and (2) the noise and vibration from the HVAC and exhaust equipment are addressed and that the term be limited to two years; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, the adjacent neighbor, represented by counsel, provided testimony in opposition to the

operation of the restaurant, citing the following primary concerns: (1) the rooftop mechanicals create noise and vibration that can be heard in the adjacent building and were installed contrary to plan and without permits; (2) the kitchen exhaust is contrary to Code and emits excessive sound, vibration, and odors; (3) garbage collection is disruptive as it occurs at late and early hours; (4) the use of the cellar is contrary to the Certificate of Occupancy and egress and ventilation requirements; and (5) the use of upper floors for commercial use is contrary to the terms of the variance; and

WHEREAS, certain other members of the community provided testimony in opposition to the operation of the restaurant, noting that the variance is limited to the cellar, first floor, and rear portion of the second floor, but commercial use also occupies the remainder of the building; and

WHEREAS, the subject site is on the south side of Waverly Place between Sixth Avenue and Washington Square West/MacDougal Street, within an R7-2 zoning district within the Greenwich Village Historic District; and

WHEREAS, the site is occupied by a four-story townhouse building occupied on the first floor and cellar by a Use Group 6A restaurant, Babbo; the occupancy of the front portion of the second floor and the entire third and fourth floors is limited to conforming use; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board granted an application under ZR § 72-21, to permit the re-establishment of a Use Group 6A eating and drinking establishment, without music or entertainment, located at the cellar level, ground floor, and second floor of the subject premises, and to permit the continuation of a non-conforming accessory business sign; and

WHEREAS, on December 14, 2004, the Board granted an amendment to permit the enlargement of the cellar for use as a wine storage area for the existing restaurant; and

WHEREAS, in response to the neighbor's concerns related to the HVAC units, the applicant agreed to adjust the HVAC equipment mounted on the dunnages of the building's fourth-floor roof, extend the kitchen exhaust up the building, as per new plans filed with and approved by DOB and LPC, and enclose the fan equipment of the kitchen exhaust within an acoustical enclosure; and

WHEREAS, the applicant also states that (1) the installation of all HVAC units has been approved and it is resolving any inconsistencies between the plans and the built conditions with DOB and ECB; (2) new, more effective, and quieter mechanical units have been installed, which include a low noise fan rotor, low speed fan motor, a compressor sound attenuation blanket and new vibration pads between the unit and dunnage for each unit; and (3) its acoustic engineer has studied the sound of the new system and concludes that the noise

**239-02-BZ**

levels in the adjacent building are reduced and now match the ambient noise level, thus not exceeding any Noise Code limits; and

WHEREAS, as to the exhaust duct, the applicant states that it submitted DOB and LPC permits for the installation work and notes that the current applications and approvals supersede all prior ones and includes a custom-designed enclosure for the exhaust duct fan apparatus and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, dated September 9, 2013, which permits the changes to the rooftop mechanicals; and

WHEREAS, as to the garbage collection and bottle-crushing, the applicant states that it employs a service that is restricted to pickup after 8:00 a.m. and that it has installed a camera to monitor collections which reflects that collection has occurred after 8:00 a.m. and is therefore in compliance; and

WHEREAS, as to the occupancy of the cellar, the applicant states that it has removed a prep table and oven from the cellar and is in the process of obtaining a permit to remove a sink at which time it will be able to file a revised Certification of Correction and have the cellar use violation closed; and

WHEREAS, as to the use of the upper floors, the applicant represents that the second floor apartment is used as a pied a terre for one of the owners and that the third/fourth floor duplex was under lease until vacated in September 2012; and

WHEREAS, the applicant submitted photographs of the vacant duplex residential unit; and

WHEREAS, the applicant represents that office use has ceased and the duplex apartment is currently listed with a real estate broker to find a new tenant; and

WHEREAS, the Board finds that, in response to the neighbor's concerns, the applicant has undertaken significant improvements to its HVAC and exhaust fan duct systems, completed work while its application was in the hearing public process, and also addressed concerns related to the garbage collection hours and use of the cellar and the upper floors; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports a grant of the requested ten-year extension of term.

*Therefore it is Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution will read: "to extend the term of the variance for ten years from the prior expiration on December 12,

**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.**

2012 to December 12, 2022; *on condition* that all work shall substantially conform to drawings as filed with this application, marked 'Received April 19, 2013' – one (1) sheet; and *on further condition*;

THAT the term will expire on December 12, 2022;

THAT a new Certificate of Occupancy be obtained by February 11, 2015;

THAT all rooftop mechanicals and associated sound attenuation measures be installed and maintained pursuant to the BSA-approved plans;

THAT the rooftop mechanicals and all other use of the building comply with Noise Code regulations;

THAT garbage collection hours are restricted to 8:00 a.m. to 8:00 p.m.;

THAT the use of the cellar must comply with all relevant regulations;

THAT the use of the front portion of the second and the entire third and fourth floors is restricted to residential occupancy;

THAT all conditions from prior resolution(s) not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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) and/or configuration(s) not related to the relief granted."

(DOB Permit No. 102702522)

Adopted by the Board of Standards and Appeals, February 11, 2014.

**The resolution has been amended. Corrected in Bulletin No. 26, Vol. 99, dated July 2, 2014.**

