



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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Delores Rubin
Chair

JESSE R. BODINE
District Manager

August 4, 2016

Hon. Margery Perlmutter
Chair
Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: BSA Variance for 142 West 19th Street

Dear Ms. Perlmutter:

On the recommendation of its Chelsea Land Use Committee, and after a duly noticed public hearing at its regularly scheduled meeting on July 27, 2016 Manhattan Community Board No. 4 (CB4), by a vote of 25 in favor, 11 opposed, 0 abstaining and 0 present but not eligible to vote, voted to recommend denial of an application under ZR 72-21 for a waiver to permit the construction of a 10-story building precluded by ZR 23-692 but voted to recommend approval of a waiver to ZR23-692 for a building of eight stories.

Background

The premises are a four-story plus cellar mixed use building located in a C6-3A district. The applicant proposes to build a new ten-story plus cellar residential building with an FAR of 7.10 and a total height of 100 feet. The proposed building complies with C6-3A bulk requirements, but because the lot is less than 45 feet wide, the "Sliver Law," ZR 23-692, restricts the building to a height no taller than the shortest adjacent building, or 66' 11" in the case of this lot.

ZR 72-21 permits applicants to apply for a Board of Standards and Appeals (BSA) variance to vary or modify zoning regulations for sites that pose practical difficulties or unnecessary hardship under existing zoning regulations. BSA requires that the applicant meets five findings (see below) for approval of a proposed variance. The applicant seeks a waiver of ZR 23-692 under ZR 72-21 in order to construct a 10-story building, citing hardships due to unique, unfavorable conditions of the lot that prevent him from earning a reasonable return with a compliant building.

Analysis

- **Site Conditions - ZR 72-21(a) and (d).**

The applicant claims that the irregular shape, narrowness and small size of the lot constitute a unique set of conditions that creates an unnecessary hardship and practical difficulties in complying with the underlying zoning. The applicant also states that these conditions were not self-created.

CB4 believes that while an irregularly-shaped lot might be inconvenient and raise practical difficulties, there is nothing in the shape of the lot that prevents construction. We note that despite his claims, the applicant proposes to build without changing the shape of the lot.

Similarly, since the lot is only the fourth narrowest of the 34 lots examined by the applicant within a 400' radius and the sixth smallest in terms of area, these conditions do not present truly unique conditions. Again, the applicant proposes to build without altering either the width or area of the lot.

Finally, the Board believes that the environmental and geological reports fail to establish any unique conditions that cannot be overcome through remediation and construction methods that are standard in Manhattan. Any increased costs due to these conditions are included in the applicant's economic analysis.

While the site may present practical difficulties compared to the rare perfect Manhattan lot, the site conditions constitute at best only a modest argument supporting a claim of undue hardship.

- **Reasonable Return and Minimal Variance - ZR 72-21(b) and ZR 72-21(e).**

As we have in the past, we defer to BSA's expertise in determining whether the applicant has truly demonstrated that the proposed waiver is necessary for the applicant to earn a reasonable return. We request that BSA consider the following specific points.

- The floor area of the proposed building is 50% greater than an as-of-right building, which in turn is 85% larger than the existing building. We question whether a building 275% as large as the existing building is actually necessary for the applicant to earn a reasonable return.
- A question was raised during the committee's discussion of the application regarding the accuracy of the assumed sale prices for new condominium units in this neighborhood. If the sale prices are understated, as we believe they may be, the applicant's expected return would be understated as well in the economic analysis. We request that BSA pay particular attention to the accuracy of the assumed local new construction sales.
- In light of the above two sections, we question whether the proposed waiver provides the minimum variance necessary to afford relief. We specifically ask BSA to determine whether the application would be expected to make a reasonable return if the proposed building were shortened to eight stories, eliminating the penthouse.

- **Character of the Neighborhood - ZR 72-21(c).**

The site is flanked by a six-story building and a seven-story building. The proposed ten-story building would tower over these, creating a jagged, sawtooth roof line. We believe that reducing the building to eight stories would better preserve the character of the neighborhood while still providing the applicant with a one-third larger building than that permitted as-of-right.

Conclusion and Recommendation

While the applicant presented many letters of support for the project, CB4 believes that he has presented only a modest argument in support of the findings required to establish undue hardship. We also question whether the proposed project is the minimum variance necessary to afford relief. In addition, there was significant opposition to the variance at the committee meeting, both from members of the community and members of the committee itself.

CB4 therefore recommends denial of an application under ZR 72-21 to permit the construction of a 10-story building which would not be permitted under ZR 23-692 (“Sliver law”). CB4 recommends approval of a waiver to ZR23-692 for an eight-story building instead of the proposed ten-story building with penthouse because:

- The hardship and uniqueness caused by the of the applicant’s site are only modest;
- The shorter building will not tower above adjacent buildings as is intended by the Sliver law; and
- The real estate market is so robust in Chelsea that a reasonable return could easily be obtained with the shorter building.

Sincerely,



Delores Rubin
MCB4 Chair



John Lee Compton, Co-Chair
Chelsea Land Use Committee



Betty Mackintosh, Co-Chair
Chelsea Land Use Committee

cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Corey Johnson, City Council