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March 19, 2021

Margery Perlmutter, *Chair*
NYC Board of Standards & Appeals
40 Rector Street, 9th Floor
New York, New York 10006-1705

Dear Chair Perlmutter:

At its Full Board meeting on March 18, 2021, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

216 Lafayette St. (between Broome and Spring Sts.) – BSA 61-12-BZ. This application is filed pursuant to §§72-21 and 72-23 by 101 H 216 Lafayette LLC. The application seeks to: (i) amend the previously granted variance permitting the conversion of a portion of the cellar and first floor of the existing building to a Use Group 6 use to allow the expansion of the Use Group 6 use to the entire first floor and cellar level; (ii) extend the amount of time permitted to substantially construct the plans; and (iii) remove the 10-year renewal requirement.

Whereas:

1. The application seeks to:
 - a. amend the previously granted variance (referred to as the “2012 variance”) of ZR§42-14(D)(2)(b) permitting the conversion of *a portion* of the cellar and first floor of the existing building to a Use Group 6 use to allow the expansion of the UG 6 use to the *entire* first floor and cellar level pursuant to ZR§11-412;
 - b. extend the amount of time permitted to substantially construct the plans as approved in the 2012 variance; and
 - c. remove the 10-year renewal requirement that was placed on the 2012 variance pursuant to ZR §11-411.
2. The building is located in an M1-5B district where UG 6 is not permitted below the second floor as-of-right. The total lot area is 2470sf, 25’ frontage on Lafayette and a depth of 100’.
3. The premises is a two-story plus cellar building, containing 4500sf (3243sf net once common areas are removed), or 1.82 FAR, and is currently vacant. The maximum FAR permitted in M1-5B is 5.0.
4. According to the 1981 Certificate of Occupancy, there were two JLWQA (UG 17 JLWQA) dwelling units on the first and second floors with accessory storage and laundry in the cellar.

5. The most recent (2010) Certificate of Occupancy continues to show two JLWQA units (each requiring at least one certified artist) and accessory artist studio uses on all floors.
6. Three easements currently encumber the premises:
 - a. The 1981 Easement with 214 Lafayette and 57-59 Crosby, which grants emergency egress to Crosby over the roof of the existing building and stipulates that no building will be built above the height of the existing building.
 - b. The 1999 Easement with 214 Lafayette and 57-59 Crosby, which permits the occupants of the premises to go in and out and receive deliveries over a strip of land behind 216 Lafayette and the south side of 57-59 Crosby. (Rather than being an impediment, this easement seems to be being advertised as an asset in the marketing of the building.)
 - c. The 2012 Easement between 216 and 218 Lafayette, which requires an opening for access through the party wall on both the cellar and first floor levels, in anticipation of sharing a restaurant tenant in both buildings. This easement would permit 218 access to 216 and allow 218 to build a bathroom on the first floor of 216. This easement expires when 218 vacates both 216 and 218 or in 2031. 218 is still operating and therefore this easement is still in effect.
7. In May 2012, 216 Lafayette applied to BSA for a variance to permit the conversion of the Lafayette St. front portion of the first floor to UG 6 (eating & drinking) with accessory use in the cellar, which CB2 recommended 36-6 be denied. The applicant for the 2012 variance was Osteria Morini at 218 Lafayette, which sought to expand its operation into 216 Lafayette: 985sf in the cellar for storage and prep, 1265sf on the ground floor for more tables, and 1021sf on the second floor to be used for special events and cooking classes (a total of 2250sf).
8. BSA subsequently denied expansion by Osteria Morini, but agreed to UG 6 in the front JLWQA unit. Although the variance was granted, and a Letter of Substantial Compliance was obtained in 2015 with revised plans for a restaurant, the work never commenced and the variance lapsed.
9. In September 2013, Caffe Morini & Enoteca at 216 Lafayette applied to the NYSLA for a new, on-premise license in a previously-unlicensed location, which CB2 recommended 25-11 be denied. The OP license was not granted, and no licensed establishment has ever operated within 216 Lafayette. The applicant subsequently dropped the request.
10. The building is one of only a few with JLWQA on the ground floor. In fact, at the time of the 2013 Variance, there was JLWQA on the ground floor rear.
11. The rear portion was occupied by a JLWQA tenant, the previous owner, until the applicant purchased the building in 2017. They have undertaken significant demolition and construction projects to improve certain “physical difficulties” for more than a year, such as the removal of the wall that separated the Lafayette St. front and Crosby St. rear on all floors and the installation of an elevator, essentially creating a single JLWQA unit taking up the entire building.
12. This work contradicts the architect’s paperwork submitted to the DOB that the building will continue to be divided into two spaces, front and rear.
13. Given the vacancies in the JLWQA units for over two years, the pre-existing, non-conforming use below the second floor has expired. However, it could be reinstated by either a Special Permit or by certification by CPC.
14. The applicant argues that the rent tolerance is low, however they are advertising it for more than \$23,000 monthly. Just this past year, there was a sale of a three-story JLWQA penthouse condominium for over \$35 million within the study area.
15. Any new variance should apply the same restrictions on eating & drinking in the basement, ground floor and/or second floor as the 2012 variance, but the applicant did not agree to exclude eating & drinking establishments.

16. Any new variance should make it clear that the use of the rear exit is for emergency egress only and cannot be used by 216 Lafayette St. for loading or offloading merchandise from Crosby St. or as a potential entrance for customers.
17. It has always been CB2's position that JLWQA should be protected.
18. This property is currently offered for sale for \$14.5 million, almost double the amount paid in 2017. The listing suggests a plethora of non-restaurant, UG 6 uses:
(https://images1.cityfeet.com/d2/mKV9yqPE6SMUSV0tAekLVJLf-CDtHaJQR5e_EHF-mfQ/document.pdf)

Therefore, be it resolved that CB2 recommends denial of this application based on its failure to make the following findings:

1. A (unique physical conditions): The building has functioned very well with conforming uses since 1928, first as an auto repair shop, later as a home to JLWQA units, and very recently as Color House (a photography/print shop).
2. B (reasonable return): Not only are the comparative properties extremely dated, but the applicant's Economic Analysis uses a cap rate of 6-6.5%, which is based on a survey of lenders taken during the third quarter of 2020—a period of unprecedented volatility and extreme market uncertainty, bound to drive cap rates above their normal ranges. A lower cap rate in non-COVID times and better comps would produce and a considerably different calculation without requiring a variance to realize an equitable return on investment.
3. C (not detrimental to the character of the neighborhood or the public welfare): This is a neighborhood with a long and strong history of arts and residential use. Loss of residential in general, and JLWQA in particular, is *per se* detrimental to neighborhood character, as would be the introduction of crowd-generating retail and restaurant uses.
4. D (self-created hardship): Given the limitations of the JLWQA uses clearly enumerated on the most recent (1981) Certificate of Occupancy, if the applicant purchased the property envisioning the potential of getting the variances in place to attract higher-paying tenants and/or a quick subsequent sale, that is most certainly a self-created hardship.
5. E (the minimum variance necessary): The property was bought for \$8.4 million in June 2017 and is currently listed for sale for \$14.5 million—an intended windfall by any standard, let alone in the COVID economy. However, CB2 relies on the BSA to make that professional determination, taking into account all of the above which we believe makes a strong case for denial.

Therefore, be it further resolved that CB2 recommends denial of an extension of the amount of time permitted to substantially construct the plans and removal of the 10-year renewal requirement.

Therefore, be it finally resolved that CB2 strongly recommends that at a minimum, the rear unit be restored to active JLWQA use on the first and second floors per the Certificate of Occupancy.

Vote: Unanimous, with 44 Board members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,



Carter Booth Chair
Community Board #2, Manhattan



Frederica Sigel, Co-Chair
Land Use & Housing Committee
Community Board #2, Manhattan

CB/jt

c: Hon. Jerrold Nadler, Congressman
Hon. Brian Kavanagh, State Senator
Hon. Deborah Glick, Assembly Member
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Margaret Chin, Council Member