

October 8, 2002

Hon. James Chin
Chair
Board of Standards and Appeals
40 Rector Street, 9th Floor
New York, NY 10006

Re: Variance 537 West 19th Street

Dear Mr. Chin:

Manhattan Community Board No. 4 is writing to you in opposition to the application for a variance, BSA Cal. #233-01-BZ, at 537 West 19th Street and Eleventh Avenue. Because it was only in mid-August that this Board received notice from the applicant that this application was going forward and that a hearing was soon to be held, this Board has been unable to follow the normal procedures of committee presentation and review, public hearing, and full Board consideration at a regular meeting in time to return a conforming response before the date of October 1, 2002, set for your hearing. The Community Board has therefore requested at a minimum that the record be held open for this Board to submit in writing its conforming testimony immediately following its regular meeting on October 2, 2002. It has also requested that the hearing be continued or a second one held to enable its testimony to be given orally before the BSA.

After following the conforming procedure, including a committee meeting at which the applicant made a presentation, and a duly noticed public hearing at the full Board meeting on October 2, at which the applicant did not appear and there were no speakers, Manhattan Community Board voted against application Cal. #233-01-BZ: 35 in favor of turning down the application, 0 opposed, 0 abstaining, and 0 present but not eligible to vote. Although the Board's opposition is based on most of the findings required for a variance, its principal concerns were the scale of the projected apartment building, and its inconsistency with community character, especially in respect to the growing art gallery district on the edge of which the site is located. The practical effects of accepting soft landfill in itself as a hardship are disturbing as a general principle as well as in this particular case.

The existence of hardship

The Board notes that the hardship alleged is an imputed one, since the owner, according to his statement at the committee review of the application, did not recently buy the property but has owned the property for many years. A motor-freight business operated on the site in a one-story

structure eventually torn down in 1996. But even on the basis of estimated current acquisition costs the Board believes on several grounds that the existence of hardship such as to require the 16-story residential building 200 feet in height shown on drawing no. 4 cannot be demonstrated on this site. Certainly, under any scenario, the height of 200 feet for a 16-story building is not justified here.

The Board cannot accept that the alleged soil conditions in themselves represent a unique physical condition of the site. The borings for Route 9A and on the site of the Chelsea Waterside Park and other projects in the area have shown similar conditions due to an old broad glacial outwash channel. Generally available maps, the most famous of which is Viele's Water Map, show that old landfill, often over soft subsoil, is present not merely in this area alone but along the Hudson River up into the 40's and on the East Side over similar areas. This is true in other parts of the city as well. It is a characteristic of not merely this district but rather of a class of land widely found in the city. If the existence of soft landfill were to be accepted as a hardship in itself, there would be no legal obstacle to many applications similar to this one. It is difficult to see how effective zoning of much waterfront property could be maintained.

The recent variances on 22nd Street referred to in the discussion of findings were granted on quite different basis, although the zoning and soil conditions are similar. The variances were sought and granted on the basis of the presence on the sites of existing buildings that could not be economically reused for conforming uses. At least one found it possible to add partial additional floors within the existing zoning without difficulty or hardship. Since the variances led to restoration of the buildings with little exterior change and introduced relatively few new residents, many of them a special population, community character was on balance actually reinforced.

Persons that have recently acquired property in the area have found it widely worthwhile to reconstruct low buildings for such purposes as restaurants and art galleries to an extent and expense comparable to constructing low new buildings. Such reconstructions were deliberately chosen in order to enhance and take economic advantage of the prevailing character of the neighborhood, which is clearly perceived as attractive to a significant segment of the population.

The Board notes further that the economic analysis by Freeman/Frazier & Associates offers only a standard unrealistic alternative: an office building of a size that would itself require expensive foundations similar to those of the proposed residential building rather than any realistic alternative. It is the choice of the option of a large building requiring such foundations that is driving this application. The applicant explicitly stated at the committee meeting at which a presentation was made that he did not want to build a building on a slab.

The realistic alternatives of a building for art galleries or a restaurant suggested by the projects mentioned above have not been examined. The area is far from public transportation, so that office buildings and even possibly apartment houses have clear obstacles to marketing and profits. Along 23rd Street few blocks to the north a little to the east of Eleventh Avenue, where a recent rezoning allowed residential uses and similar soil conditions required elaborate foundations, two significantly lower buildings with the maximum height of 140 feet enforced by the new zoning and with 14 stories or less have been constructed without claims of hardship and

another has been planned. It may be relevant that these last buildings have been slow to rent and the third project remains stalled.

Over time scattered conforming structures of considerable height have been erected on landfill in the area. Among them is a structure now occupied by a women's prison directly adjacent on the north, which might cast a shadow on marketing the apartments in the proposed building. The lower floors of the proposed building face not the Hudson River, but the corrugated metal façades of the Chelsea Piers across a loud and busy highway.

According to the data provided by the applicant's consultant, art gallery and restaurant space is currently renting at prices around \$43 dollars a square foot. The property is around the corner from a street housing a large number of galleries. The owner is proposing a ground floor height of 20 feet that would not be required for the implausible use of a bank mentioned to the committee by the owner for this low-trafficked area or even the similarly unlikely retail suggested in the commercial alternative. To propose so high a space suggests that he is aware of the possibility of attracting the galleries that nowadays almost demand it. Together these considerations suggest that a 12,500 square foot lot like the subject one could support an appropriate two or three-story building on a simple foundation with a probable income from galleries or a restaurant well over half that of the commercial alternative proposed and with far lower construction, maintenance, operation, and tax costs. A fair evaluation of such an alternative should be made before hardship is found.

Consistency with community character

That the proposed building is inconsistent with existing community character is clear. On the block of 19th Street buildings are low with almost no legal residential uses. Directly to the north is a women's prison. In the blocks to the north are old buildings dominated by art gallery uses. Two new museums are under construction or proposed nearby in addition to the existing Dia Foundation. There are large clubs. This is a neighborhood appealing to a population that values arts galleries and a definite appearance and "feel" differing from the upscale residential one for which this tall, elaborate building is designed. Indeed, the elaborate architecture of the building is completely inconsistent with the industrial architecture of the surrounding area. The art galleries especially are a great economic asset to the city. To add large-scale residential uses would in itself threaten the character that has attracted them and also bring a demand for infrastructure that would further change this character.

The galleries fled SoHo to avoid crowds and an increasingly mercantile and upscale feeling. To allow a building like that proposed in the area, which would almost certainly be followed by other applications, would be to risk a blow to this artistic and economic success.

Planning in the area

Finally, the zoning in the area is currently the object of a concentrated study by the Community Board, which hopes to have planning proposals ready next spring. The Board has been consulting with the Department of City Planning, which has also been considering proposals for the area, and we hope to be able to work together. Both the Community Board and the Planning Department are concerned about the future of the art galleries and other uses in the area. It would

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be unfortunate if the Board of Standards and Appeals were to allow a variance that might well be inconsistent with the probable future of the area.

Sincerely,



Simone Sindin
Chair
Manhattan Community Board No. 4

Edward S. Kirkland
Chair
Chelsea Preservation & Planning Committee

This letter was approved by the full Board at its meeting on October 2, 2002.

cc: Hon. Michael Bloomberg, Mayor
Hon. C. Virginia Fields, Manhattan Borough President
Hon. Jerrold Nadler, US Representative
Hon. Thomas Duane, NY State Senator
Hon. Eric Schneiderman, NY State Senator
Hon. Richard Gottfried, NY State Assembly Member
Hon. Scott Stringer, NY State Assembly Member
Hon. Christine Quinn, City Council Member
Applicant