



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**CHRISTINE BERTHET**  
Chair

**JESSE BODINE**  
District Manager

October 14, 2015

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

**Re: BSA Cal. # 333-78-BZ**  
**Amendment to Variance for 136 West 24<sup>th</sup> Street**

Dear Ms. Perlmutter:

On the recommendation of its Chelsea Land Use Committee, and after a duly noticed public hearing at the regular Board meeting on October 7, 2015, Manhattan Community Board No. 4 (CB4), by a vote of 39 in favor, 1 opposed, 1 abstaining and 0 present but not eligible to vote, voted to recommend denial of an application to reopen and amend the variance granted in 1978 to 136 West 24<sup>th</sup> Street (Block 799, Lots 60, the "Site") under BSA #333-78-BZ (the "Variance").

The application seeks restoration of unused development rights found to have no value by the Board of Standards and Appeals (BSA) in granting the Variance in 1978, with the intention of transferring them to another parcel in a zoning lot to be created by a merger of contiguous parcels on Block 799. The Board believes that BSA has no legal obligation to grant the proposed amendment and that the intended conveyance of the development rights would be detrimental to the public welfare.

**Background**

136 West 24<sup>th</sup> Street, the Site, is occupied by a five story building located between Sixth and Seventh Avenues in an M1-6 zone, which does not allow residential uses as of right. In 1978 BSA granted to the then owners of the Site the Variance permitting the second through fifth floors of the Site to be converted to residential use. In granting the Variance, BSA determined that manufacturing and commercial uses within the building were not financially viable. It further determined that such uses were not viable in the surrounding area and that the building's unused development rights therefore had no value. On approval of the variance the owners created a cooperative with four units.

**Application and Public Hearing**

The current owners of the Site seek an amendment to the Variance to approve the right to convey the unused development rights on the Site to an undetermined, newly formed zoning lot created by merging one or more lots.

During the September 21<sup>st</sup> Chelsea Land Use Committee meeting, the application was presented not by the applicant or his representative, but by a representative of the Extell Development Company which intends to purchase the development rights if BSA approves the application. Also present at the meeting was a representative of JHG Holdings who asserted that they have a contract with the owners to purchase the same development rights and that the contract was under litigation.

Mr. David Class, the cooperative's president who said he has lived in the building since 1976, stated that the intention of the cooperative is to use a portion of the proceeds of any sale of development rights for building repairs and upgrades.

#### **CB4 Analysis and Recommendation**

CB4 is committed to balancing the desire for growth with the need for livable neighborhoods that work for residents, businesses and visitors. One example of this is the pairing of the large-scale Sixth Avenue zoning with the lower scale Chelsea zoning embodied in the Board's Chelsea 197-a plan adopted by the City Council in 1996.

In recent years, however, the growing popularity of Chelsea with developers, due in part to the creation of the Special West Chelsea District, has made achieving a reasonable balance increasingly difficult. The greatly increased value of transferrable development rights combined with unfortunate midblock zoning that lacks building bulk and height controls have put increasing pressure on the community's lower scale midblocks.

The present application is the third to have come before the Board recently related to assemblages in the midblocks between Sixth and Seventh Avenues. Based on its prior experience, the Board believes it likely that if approved the proposed transfer of development rights will be used to build a mid-block, out-of-scale transient hotel with its attendant traffic problems.

We believe that BSA has the authority to approve the application, but we also believe it has no legal obligation to do so. While the Board is sympathetic to the residents' desire for funds to repair and upgrade their building, we believe that the owners realized significant value from the original variance that legalized their residential use of the building, and that any value from the sale of unused development rights would be an additional gain. We also believe that any transfer of the building's unused development rights would contribute to inappropriate development and would be detrimental to the community.

We therefore recommend that BSA deny the application to reopen and amend the Variance.

Sincerely,



Christine Berthet  
Chair



J. Lee Compton  
Co-Chair



Betty Mackintosh  
Co-Chair

Chelsea Land Use Committee

Chelsea Land Use  
Committee