

167-13-BZ
CEQR #13-BSA-147K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Michael Calabrese, owner.

SUBJECT – Application June 4, 2013 – Variance (§72-21) to permit the enlargement of an existing one-story automobile sales establishment, contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1614/26 86th Street and Bay 13 Street, southwest corner of 86th Street and Bay 13 Street, Block 6363, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #11BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 5, 2013, acting on Department of Buildings Application No. 320748045, reads in pertinent part:

Enlargement to an existing one story automobile sales establishment (UG 16) in an R5 zoning district is contrary to Sections 22-10 ZR and 52-40.

Prior variance under Cal. No. 103-94-BZ has expired; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the enlargement of an existing one-story building occupied by an automotive sales establishment (Use Group 16), which does not conform to district use regulations, contrary to ZR §§ 22-10 and 52-40; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with continued hearings on October 29, 2013, November 26, 2013, and December 17, 2013, and then to decision on January 28, 2014; and

WHEREAS, the site 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 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of 86th Street and Bay 13th Street within an R5 zoning district; and

WHEREAS, the site has approximately 120 feet of frontage on 86th Street and 86 feet of frontage on Bay 13th Street, with a total lot area of 10,320 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story commercial building with 2,434 sq. ft. of floor area (0.24 FAR) used for an automotive dealership (Use

Group 16) and open display of vehicles on the remainder of the lot; and

WHEREAS, the building was completed in 1958 pursuant to a variance adopted by the Board on May 7, 1957 under BSA Cal. No. 113-56-BZ, which allowed in business and residence use districts the construction of a gasoline service station, auto washing, lubrication, office, accessory sales, minor repairs with hand tools, parking and storage of more than five motor vehicles, and signs within 75 feet of the residence use district; and

WHEREAS, the term of the variance was extended in 1972 and again in 1983; in 1985, the variance was amended to eliminate the gasoline service station uses and limit the occupancy to automobile sales and accessory parking, including construction of an enlargement to the existing building; and

WHEREAS, on March 30, 1993, the variance was extended to expire on May 7, 2002; however, in 1995, pursuant to BSA Cal. No. 103-94-BZ, the Board granted a new variance application to allow for a one-story enlargement to an existing one-story building used for automobile sales; and

WHEREAS, the proposed enlargement allowed for expansion of the building to the western lot line and was designed to enclose the automobile sales and reduce the visual impact of the existing use; the variance included a 20-year term to expire on June 20, 2015; and

WHEREAS, the enlargement was never constructed and, ultimately, after the issuance of a new Certificate of Occupancy, which referenced BSA Cal. No. 103-94-BZ, it was discovered that the building and approval pursuant to BSA Cal. No. 113-56-BZ had not been superseded; and

WHEREAS, the applicant now proposes to enlarge the existing one-story building used for automobile sales as was previously approved by the Board under BSA Cal. No. 103-94-BZ; and

WHEREAS, the proposed enlargement would increase the size of the existing building to 5,184 sq. ft. (0.5 FAR) (1.0 FAR is the maximum permitted for a conforming use); and

WHEREAS, because the automotive sales use is not permitted in the subject zoning district, the applicant seeks a use variance to permit the enlargement of the Use Group 16 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of the site for automotive use; (2) the obsolescence of the subject building, built in 1957, for the existing use; and (3) the location on a commercial thoroughfare; and

WHEREAS, as to the history of use and the existing building, the applicant states that the building was designed for automotive uses and operated for such uses from at least 1957 to the present; and

WHEREAS, the applicant represents that the use

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has been established at the site for more than 50 years and that due to its history of automotive use and associated soil contamination it is precluding from performing significant excavation or creating a cellar; and

WHEREAS, the applicant states that as of right development would require complete demolition of the existing building and would likely involve significant environmental remediation for any below grade excavation due to the historic automotive use, which pre-dates modern environmental regulations; and

WHEREAS, the applicant notes that the proposed construction requires minimal soil disturbance, while allowing the use established by the variance and in continuous existence at the site, in some form, for more than 50 years to continue; and

WHEREAS, as to the existing building, the applicant notes that the current size and L-shape of the building, which has not been altered for almost 30 years, is too constrained to accommodate a modern automotive dealership; and

WHEREAS, the applicant notes that the size is insufficient compared to the standards of automotive dealerships in the immediate vicinity; and

WHEREAS, at the Board's request, the applicant performed an analysis of nearby automotive dealerships and concluded that when compared to the automotive dealerships within 1.7 miles of the site, the existing building is significantly smaller than all others; specifically, the other showrooms have floor area ranging from 4,950 sq. ft. to 20,150 sq. ft. – which is twice to ten times as large as the existing building; and

WHEREAS, further, the applicant concluded that the FAR for the other showrooms is well in excess of the existing 0.23 FAR and the proposed 0.5 FAR, which would be comparable to the smallest of the nearby showrooms; and

WHEREAS, as to the building's shape, the applicant notes that it is an irregular L-shape and that half of the building is set back from the street frontage in a way that diminishes marketability and street presence; and

WHEREAS, the applicant proposes to square-off the building, as proposed in 1994, so as to have a rectangular-shaped building which allows for increased visibility at the 86th Street frontage and also allows for improved circulation within the building; and

WHEREAS, primarily, the applicant states that the small size of the existing building precludes it from attracting major automotive companies, due to the inability to meet their design and marketing standards; and

WHEREAS, the applicant represents that an automotive company's model requires a regularly-shaped building with high visibility for its showroom from passersby; and

WHEREAS, the applicant represents that the lack of space creates a hardship in maintaining the existing building for a feasible automotive sales use; and

WHEREAS, the applicant notes that the proposed enlargement is consistent with the Board's approval for an enlargement and that the need for the enlargement remains the same as at the time of the 1994 approval; and

WHEREAS, the applicant asserts that the building is unusually-shaped and, as evidenced by the conclusion nearly 20 years ago, that it was obsolete for modern use; no change has occurred since the 1994 grant and, the applicant asserts that the conditions underlying the 1994 grant remain or have become worse; and

WHEREAS, as to the location, the applicant states that the site has 120 feet of frontage along 86th Street and that this portion of 86th Street is a busy, predominantly commercial street, which constrains the feasibility of conforming residential development; and

WHEREAS, the applicant notes that the north side of 86th Street is within a C8-1 zoning district and is occupied by commercial and even some manufacturing use; the block to the north across Bay 13th Street has a C1-2 zoning district overlay and is also occupied by commercial use; and

WHEREAS, based upon the above, the Board finds that the history of the site, and the characteristics of the historic building and its use are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board notes that the current proposal to enlarge the building is the same as the 1994 proposal to enlarge the building, which the Board approved, but was never constructed; and

WHEREAS, accordingly, the Board concludes that the hardship of trying to accommodate a modern automotive dealership in the historic automotive services building has only become more pronounced; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a 2,445 sq. ft. automotive sales and showroom building with outdoor storage, like the existing conditions; and (2) the proposed 5,195 sq. ft. automotive sales and showroom building; and

WHEREAS, the study concluded that the existing model would not result in a reasonable return, but that the proposed enlargement would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant asserts that the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be

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detrimental to the public welfare; and

WHEREAS, the applicant notes that the site is immediately adjacent to two commercial zoning districts: (1) to the north across 86th Street is a C8-1 zoning district where the automotive sales use would be permitted as of right and (2) to the east across Bay 13th Street is a C1-2 zoning district; and

WHEREAS, the applicant states that the surrounding portion of 86th Street is predominantly commercial in nature and the adjacent corner on 86th street and Bay 13th Street is occupied by a bank; and

WHEREAS, the applicant also notes that automotive use – either gasoline sales, service, or sales – has been present at the site, pursuant to the Board’s grants for more than 50 years and that the proposed use will not increase the intensity of activity on the site, but rather enclose portions of a use that has been historically open and, thus, render it more compatible with other uses within the subject R5 zoning district; and

WHEREAS, the applicant asserts that the proposed enlargement would reduce the impact of the non-conforming use on the surrounding neighborhood, enclosing an open portion of the lot that contains vehicles, and while the variance includes an enlargement of the building, it does not include an enlargement or extension of the use, which will continue to occupy the entire zoning lot; and

WHEREAS, the applicant asserts that enlarging the showroom reduces the unenclosed sales area and will reduce the number of cars stored on the lot and will improve the appearance and operation of the site, more consistent with enclosed uses typically permitted in C1 and C2 zoning districts; and

WHEREAS, specifically, the applicant notes that the enlargement of the building will be along the western portion of the site adjacent to commercial use and will replace the open display of vehicles with an enclosed showroom that is more compatible with residential use; and

WHEREAS, as to bulk, the applicant notes that the C8-1 zoning district across the street would allow 1.0 FAR for the automotive dealership use and that 1.0 FAR is the maximum permitted FAR for a conforming use in the subject R5 zoning district, thus, the proposed 0.5 FAR is compatible from a bulk perspective; and

WHEREAS, at hearing, the Board raised the following concerns: (1) whether the landscaping and buffering with the adjacent residential use was sufficient; (2) whether the signage complies with C1 zoning district regulations; (3) that there are excess banners; and (4) that there are excess vehicles on the site; and

WHEREAS, as noted, the Board also asked the applicant for an analysis of the parameters of other automotive dealerships in the area to establish the context for such use; and

WHEREAS, in response to the Board’s concerns, the applicant submitted (1) a revised site plan reflecting increased landscaping and buffering with the adjacent residential use and a planted area at the front of the building; (2) a note that all future signage will comply with C1 zoning district signage regulations, rather than the C8-1 zoning district regulations as initially proposed; (3) photographs of the site reflecting the elimination of excess banners and the removal of graffiti; and (4) a response that excess vehicles had been removed and would be stored at a facility across the street, by agreement with the owner; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site’s historic use and conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as unlisted Action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA-147K dated May 31, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a to permit, within an R5 zoning district, the enlargement of an existing one-story building

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occupied by an automotive sales establishment (Use Group 16), which does not conform to district use regulations, contrary to ZR §§ 22-10 and 52-40; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 22, 2014" – (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged building: a total floor area of 5,184 sq. ft. (0.5 FAR); a total height of 17'-0", a side yard with a minimum depth of 5'-0" along the southern lot line, as illustrated on the Board-approved plans;

THAT the hours of operation will be limited to Monday to Thursday, 9:00 a.m. to 9:00 p.m.; Friday and Saturday, 9:00 a.m. to 6:00 p.m.; and Sunday, 11:00 a.m. to 6:00 p.m.;

THAT signage on the site will comply with C1 district regulations;

THAT all fencing and landscaping be installed and maintained as reflected on the BSA-approved plans;

THAT the parking layout be as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 28, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, January 28, 2014.

Printed in Bulletin Nos. 4-5, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

