

77-12-BZ

CEQR #12-BSA-108K

APPLICANT – Moshe M. Friedman, P.E., for Goldy Jacobowitz, owner.

SUBJECT – Application April 3, 2012 – Variance (§72-21) to permit a new residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 91 Franklin Ave, 82'-3" south side corner of Franklin Avenue and Park Avenue, Block 1899, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....	4
Negative:.....	0
Absent: Vice Chair Collins.....	1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 13, 2012, acting on Department of Buildings Application No. 320384026, reads in pertinent part:

Proposed five-story residential building in an M1-1 zoning district is contrary to 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014, February 25, 2014, and March 25, 2014, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Brooklyn, recommends approval of this application; and

WHEREAS, Councilmember Steven Levin and former Councilmember Letitia James provided testimony in support of this application; and

WHEREAS, the subject site is located on the east side of Franklin Avenue, between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 50 feet of frontage along Franklin Avenue, a depth of 100 feet, and approximately 5,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by two buildings: a vacant, three-story frame residential building, which, according to the Sanborn map, existed as of 1887; and an accessory garage; and

WHEREAS, the applicant notes that residential use became non-conforming at the site as of December 15, 1961, when the M1-1 designation took effect; and

WHEREAS, the applicant states that the building is structurally unsound and was vacated in 2009; consequently, residential use has been discontinued at the site for more than two consecutive years and, per ZR § 52-61, cannot be resumed; and

WHEREAS, accordingly, the applicant seeks a use variance to maintain the site's historic residential use by constructing a new four-story multiple dwelling in accordance with the bulk regulations applicable in an R6A district; and

WHEREAS, initially, the applicant proposed a five-story multiple dwelling with 14,840 sq. ft. of floor area (2.97 FAR), 60 percent lot coverage, ten dwelling units, a rear yard depth of 34'-2", and a total building height of 60 feet; and

WHEREAS, at the Board's direction, through the hearing process, the proposal was reduced in height, number of stories, number of dwelling units, and FAR; and

WHEREAS, the applicant now proposes a four-story building multiple dwelling with 12,610 sq. ft. of floor area (2.52 FAR), 63 percent lot coverage, eight dwelling units, a rear yard depth of 30'-4", and a total building height of 36'-0"; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site's history of residential use and adjacency to residential buildings on all sides, and across the street; (2) its contaminated soil; and (3) its small lot size of 5,000 sq. ft. and narrow lot width of 50 feet; and

WHEREAS, the applicant states that a residential building has occupied the site for approximately 125 years, and that there are residential buildings directly adjacent to the lot on all sides and across the street; and

WHEREAS, in addition, the applicant notes that the site borders an MX-4 zoning district, where residences are permitted as-of-right; and

WHEREAS, as to the building itself, the applicant provided an engineer's report that indicates that the building—with its awkward layouts, low ceilings, and lack of energy efficiency due to improper insulation—is obsolete for modern residential living and that, more importantly, it is structurally compromised in a manner that makes reconstruction infeasible; and

WHEREAS, moreover, the applicant states that even if the building could be restored to a habitable condition, residential use has been discontinued for more than two consecutive years and may not be resumed; and

WHEREAS, the applicant also represents that the site suffers from soil contamination; and

WHEREAS, specifically, the applicant provided a report that indicates the presence of unacceptable levels of lead and mercury within the soil; as such, soil management, transportation, and disposal in accordance with New York State Department of Environmental

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Conservation (“DEC”) regulations is required, at significant cost; and

WHEREAS, finally, the applicant represents that the site’s narrowness and small lot size would result in a conforming manufacturing or commercial building with inefficient, narrow floor plates that would be inadequate space for providing a loading dock; further, the applicant states that based on the small lot size, a conforming development would provide a maximum floor plate of 5,000 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, in support of its claim that the site—with its narrow lot width and small lot size—is not feasible for modern manufacturing use, the applicant conducted a study of all vacant sites within the subject M1-1 district; the applicant notes that vacant sites are comparable because the existing buildings at the site are in disrepair and must be demolished; and

WHEREAS, based on the study, the applicant concludes that, except two other sites on Franklin Avenue, vacant sites within the M1-1 district are either: (1) occupied by existing commercial or industrial uses; (2) adjacent to existing commercial or industrial uses; (3) located on streets where conforming uses predominate; or (4) located adjacent to other vacant sites, which could allow for a possible assemblage; and

WHEREAS, thus, the applicant concludes that only the subject site is too small to be developed independent of its neighboring sites, unable to develop in conjunction with adjacent sites (because it is surrounded by residences on all sides), and located on a predominantly residential street; and

WHEREAS, the Board disagrees with the applicant that a 5,000-sq.ft. site is particularly unique or prohibitively small to develop; however, the Board agrees with the applicant that the site’s historic residential use, adjacency to other residential uses (indeed, the predominance of residential use on the block), and soil contamination, are unique physical conditions, which, in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return on an as-of-right industrial building at the site and the proposal; and

WHEREAS, according to the study, a one-story building with approximately 5,000 sq. ft. of floor area occupied by a manufacturing use would yield a negative rate of return; the proposed residential building, on the other hand, would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot’s unique physical condition, there is no

reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building 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 detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the subject block is primarily developed with residential buildings; the applicant notes that directly behind the site—the eastern half of the subject block—is an MX-4 zoning district, where the proposed use would be as-of-right; and

WHEREAS, as to adjacent uses, as noted above, there are residential uses on all adjacent lots and across the street; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least 1887 until 2009; thus, the applicant asserts that the site—and the subject stretch of Franklin Avenue—have a long-standing residential character despite the site’s M1-1 designation; and

WHEREAS, accordingly, the applicant contends that the proposal is more consistent with the neighborhood character than a conforming use would be; and

WHEREAS, as to bulk, the applicant states that the building complies in all respects with the R6A bulk regulations; and

WHEREAS, at hearing, the Board expressed concerns regarding the compatibility of the originally-proposed building height and number of stories with the surrounding residential buildings; and

WHEREAS, in response, the applicant reduced the height from 60’-0” to 36’-0” and the number of stories from five to four, and provided a streetscape, which demonstrates that the proposal is consistent with the height of the surrounding residential buildings; and

WHEREAS, accordingly, 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, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site’s unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, 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 an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

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WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 12BSA108K, dated March 19, 2012; 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, the New York City Department of Environmental Protection’s (“DEP”) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the November 2013 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; 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, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this

A true copy of resolution adopted by the Board of Standards and Appeals, April 8, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

application marked “Received April 3, 2014” – (11) sheets; and *on further condition:*

THAT the following are the bulk parameters of the building: a maximum floor area of 12,610 sq. ft. (2.52 FAR), a maximum lot coverage of 63 percent, eight dwelling units, a minimum rear yard depth of 30’-4”, and a maximum building height of 36’-0”, as indicated on the BSA-approved plans;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP’s approval of the Remedial Closure Report;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

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

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, April 8, 2014.

