

347-12-BZ

CEQR #13-BSA-072Q

APPLICANT – Law Office of Vincent L. Petraro, PLLC, Mitchell S. Ross, Esq., for X & Y Development Group, LLC., owner.

SUBJECT – Application December 26, 2012 – Variance (§72-21) to permit a transient hotel and community facility use (*North Queens Medical Center*), contrary to use regulations (§22-10), and Special Permit (§73-66) to allow projection into flight obstruction area of La Guardia airport. R7-1 (C1-2) zoning district.

PREMISES AFFECTED – 42-31 Union Street, east side of Union Street, 213' south of Sanford Avenue, Block 5181, Lot(s) 11, 14, 15, Borough of Queens.

COMMUNITY BOARD #7Q

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 Department of Buildings (“DOB”), dated November 26, 2012, acting on DOB Application No. 420213219, reads in pertinent part:

1. Proposed building height exceeds the maximum height limitation by the flight obstruction map of LaGuardia Airport, per ZR 61-20;
2. Proposed transient hotel is not within uses permitted as-of-right in R7-1 zoning district, per ZR 22-10; and

WHEREAS, this is an application under ZR § 72-21, 73-66, and 73-03, to permit, on a site partially within an R7-1 (C1-2) zoning district and partially within an R7-1 zoning district, the construction of a 18-story mixed community facility and commercial building to be occupied as a transient hotel (Use Group 5) with 180 rooms and an ambulatory diagnostic or treatment health care facility (Use Group 4), contrary to the use and height regulations set forth in ZR §§ 22-10 and 61-20; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 13, 2014, and then to decision on June 17, 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 7, Queens, recommends approval of the application, subject to the following conditions: (1) the parking will be attended and open to the public at daily rates; (2) a shuttle will be provided to Main Street in Flushing and to LaGuardia Airport; (3) curbside drop off will be prohibited by the hotel and by the health care facility; (4) the health care facility will operate during regular business hours; (5) there will be no catering or restaurant connected to the hotel; (6) the hotel will not obtain a liquor license; (7) the

hotel and the health care facility will maintain orderly pickup and delivery of materials; (8) a community room will be provide for community board and civic association organization with free parking upon request; (9) the building will be LEED-certified “Gold” and have a “green” roof; and (10) the hotel will have 161 rooms; and

WHEREAS, certain members of the surrounding community submitted testimony in opposition to application (the “Opposition”), citing the following concerns: (1) the excessive height of the building; (2) the inconsistency of transient use with the nearby residential uses; (3) the ability of the sewer system to accommodate a 180-room hotel; (4) the construction practices and after-hours work occurring at the site at present; and (5) increased traffic around the site during construction and after the hotel and medical facility begin operation; and

WHEREAS, the subject site is an irregularly-shaped through lot that comprises Tax Lots 11, 14, and 15 (Tentative Lot 15), partially within an R7-1 (C1-2) zoning district and partially within an R7-1 zoning district; and

WHEREAS, the site has approximately 126 feet of frontage along Union Street, approximately seven feet of frontage along Bowne Street, and 32,532 sq. ft. of lot area; and

WHEREAS, in addition, the site is within a flight obstruction area for LaGuardia Airport, which limits the height of any building at the site to 155’-0”;

WHEREAS, the applicant represents that, at present, the site is a construction site for an as-of-right residential development; and

WHEREAS, the applicant proposes to construct an 18-story mixed community facility (Use Group 4) and commercial (Use Group 5) building; the proposed bulk parameters are as follows: 156,154 sq. ft. of floor area (4.8 FAR)(44,895 sq. ft. of community facility floor area (1.38 FAR) and 111,259 sq. ft. of commercial floor area (3.42 FAR)); total building height of 229’-6” (243’-0”, including bulkheads); 31-percent lot coverage; a rear yard depth of 60’-0”; two side yards with widths of 8’-0”; 180 hotel rooms; and 300 accessory parking spaces; and

WHEREAS, because Use Group 5 is not permitted as-of-right in the R7-1 portion of the site, the applicant seeks a use variance; and

WHEREAS, because, as noted above, the site is within a flight obstruction area, and the proposed height (243’-0’) exceeds 155’-0”, the applicant seeks a special permit pursuant ZR § 73-66; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: (1) the site’s substandard soil conditions; and (2) its unusual shape; and

WHEREAS, the applicant asserts that the site’s soil in substandard, resulting in premium construction costs; and

WHEREAS, specifically, the applicant states that, based the report of its geotechnical consultant, the soil at

347-12-BZ
CEQR #13-BSA-072Q

the site is particularly unstable, loose, and uneven; as such, deep excavation (to a depth of 50'-0" below grade) and piling at closer intervals are required in order to protect adjacent sites during foundation and sub-grade construction work; in addition, the site contains a significant number of intrusions (boulders), which further increase the costs owing to the unstable soil; and

WHEREAS, at hearing, the Board sought clarification regarding the necessity of the proposed deep excavation when borings showed quality soil at significantly shallower depths; and

WHEREAS, in response, the applicant clarified that although suitable soil on which to construct a foundation was found at shallower depths, such soil also contained large boulders, which must be removed in order to properly construct the building; as such, a deep excavation was not anticipated by the borings, but became necessary after excavation began; and

WHEREAS, the applicant also states that the poor quality of the soil is unique in the surrounding area; according to the geotechnical report, the soils in the area were deposited during the glacial era, which is characterized by a variable pattern in soil composition; thus, a significant number of nearby sites have soil conditions more conducive to development; and

WHEREAS, the applicant states that the site's shape makes it infeasible to develop the site with a conforming use; and

WHEREAS, the applicant states that the site's northern and southern boundaries have a jagged quality, which gives the site its unique shape; the northern boundary jogs as it proceeds east and changes direction five times at five different angles before it reaches Bowne Street; the southern boundary is similar irregular, although not as angled – it changes direction four times at right angles; the overall effect of the jogging boundary lines is a dramatic tapering of the site from Union Street, where the site has approximately 126 feet of frontage, to Bowne Street, where the site's frontage is just seven feet; and

WHEREAS, the applicant asserts that the irregularity and tapering of the site limits the buildable areas of the lot, constrains the building envelope, creates design inefficiencies, and prevents utilization of the available floor area on the site; and

WHEREAS, for example, the applicant states that—in contrast to an ordinary four-cornered building—a building at the site must have no fewer than 11 corners, each of which requires corner structural panels; accordingly, because corner panels cost more than typical panels, increased construction costs are a direct result of the site shape; and

WHEREAS, additionally, the applicant states that the site's shape adversely affects standard dwelling unit layouts in a conforming building; because of the angles and curves of the building envelope, the interior environment of a dwelling unit must be adjusted using custom installation, curvilinear materials and non-standard equipment and appliances; accordingly, the

applicant states that the site's shape prevents a sufficient number of suitably-sized, modern dwelling units to offset the premium costs of construction; and

WHEREAS, finally, the applicant contends that the site's shape—particularly the jogging of the site's boundary lines—results in a disproportionately long perimeter (in comparison to the site's lot area), which in turn increases the number of adjacent sites to be protected with underpinning and shoring during construction, at significant cost; and

WHEREAS, as to uniqueness, the applicant represents that there are no sites of even remotely similar shape within ten blocks of the site, making its shape unique in the surrounding area; and

WHEREAS, the applicant states that it analyzed the feasibility of developing the site as-of-right with a mixed residential and community facility building (rental) with the following bulk parameters: 156,154 sq. ft. of floor area (4.8 FAR)(44,485 sq. ft. of community facility floor area (1.38 FAR) and 111,259 sq. ft. of commercial floor area (3.42 FAR)); 14 stories; a total building height of 139'-11"; 161 dwelling units; and 200 accessory parking spaces; and

WHEREAS, the applicant states that although the as-of-right scenario's floor-to-ceiling heights are significantly reduced in order to achieve an as-of-right height within the FAA height limitations and such reductions reduce the value of the building significantly; and

WHEREAS, accordingly, the applicant states that a conforming development does not produce enough revenue to offset the premium construction costs that result from the site's substandard soil conditions and unusual shape; and

WHEREAS, based upon the above, the Board finds that, in accordance with ZR § 72-21(a), the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant assessed the financial feasibility the following scenarios: (1) a 14-story as-of-right mixed residential (rental) and community facility building with a total height of 139'-11"; (2) a 12-story as-of-right mixed residential (apartment hotel) and community facility building with a total height of 155'-0"; (3) a lesser-variance (no special permit) 12-story mixed hotel and community facility with a total height of 155'-0"; (4) an 18-story mixed residential (apartment hotel) and community facility building with a total height of 243'-0" pursuant to a special permit under ZR § 73-66; (5) an 18-story mixed residential (condominium) and community facility building with a total height of 243'-0" pursuant to a special permit under ZR § 73-66; (6) a 14-story mixed residential (rental) and community facility building with a total

347-12-BZ
CEQR #13-BSA-072Q

height of 177'-0" on a typical rectangular site; and (7) the proposal; and

WHEREAS, the applicant concludes that, other than the scenario involving the conceptual rectangular lot, only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board questioned: (1) the size and the proposed number of hotel rooms, as the most efficient use of the bulk; and (2) the comparable sites used to determine the site value; and

WHEREAS, in response, the applicant provided: (1) a letter from Starwood hotels, the presumptive tenant of the building, which explains Starwood's requirements for room size and type; and (2) additional comparable sites and a revised analysis on site value; and

WHEREAS, based upon its review of the record, the Board has determined, per ZR § 72-21(b), that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use 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; and

WHEREAS, the applicant represents that the immediate area is characterized by a mix of commercial, community facility, and residential uses, including multiple dwellings, one- and two-family homes, schools, playgrounds, and the bustling commercial areas along and around Main Street; Bowne Street also includes a number of commercial uses at the ground floor; the wider area includes Downtown Flushing, the Queens Botanical Garden, Flushing Hospital Medical Center, and Citi Field; and

WHEREAS, the applicant represents that there are more than a dozen hotels three blocks north and west of the site in the Downtown Flushing area; and

WHEREAS, as to the immediately adjacent sites, the applicant states that directly south of the site are a four-story multiple dwelling and a nine-story nursing home and rehabilitation center, and directly north of the site are a two-story, two-family building, a two-story church, a six-story multiple dwelling, and a one-story supermarket; and

WHEREAS, as to bulk, the applicant states, as noted above, that the proposal is within the maximum 4.8 FAR permitted in the underlying R7-1 district, as well as all the bulk regulations regarding yards, sky-exposure plane, open space, and setback; and

WHEREAS, as to traffic and parking, the applicant provided a study, which reflects that the proposal will not have significant negative impacts on parking or traffic; in fact, the applicant asserts that an as-of-right residential building would have a greater impact on parking and traffic, because hotel guests typically use public transportation and travel during different periods of the day than residents; and

WHEREAS, the applicant also notes that, consistent with the community board's request, there will be no delivery of materials or hotel guests to the curbside; instead, the underground parking area will be used so as to minimize the number of vehicles in front of the building; and

WHEREAS, accordingly, the Board finds that this action will neither 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from its soil conditions and shape; 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 unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, the Board notes that the applicant explored six other scenarios, including a hotel scenario with fewer rooms, in order to demonstrate that the proposal is the minimum necessary to afford relief; accordingly, the Board is persuaded that the proposal satisfies ZR § 72-21(e); and

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

WHEREAS, the applicant asserts that the proposal satisfies all findings required for the Board to grant a special permit pursuant to ZR § 73-66; and

WHEREAS, the Board notes that under ZR § 73-66, it may permit the construction, enlargement, or reconstruction of a building or other structure in excess of the height limits established under ZR §§ 61-21 and 61-22, provided that: (1) the applicant submits a site plan, with elevations, showing the proposed building or other structure in relation to such maximum height limits; and (2) the Board finds that such proposed building or other structure, enlargement, or reconstruction would not constitute a hazard (either under the existing layout of the airport or under any planned reorientation or lengthening of the airport runways) to the safety of the occupants of such proposed building, to other buildings in the vicinity or to the safety of air passengers, and would not disrupt established airways; and

WHEREAS, finally, ZR § 73-66 specifically requires that the Board refer the application to the Federal Aeronautics Administration ("FAA") for a report as to whether such construction will constitute a danger to the safety of air passengers or disrupt established airways; and

WHEREAS, the Board notes that the height limit established for any building at the site under ZR §§ 61-21 and 61-22 is 155'-0" and the proposal reflects a maximum building height of 243'-0" (including bulkheads); and

WHEREAS, the applicant submitted the required

347-12-BZ
CEQR #13-BSA-072Q

site plan showing the proposed building in relation to the maximum height limits; and

WHEREAS, the applicant also submitted a July 23, 2009 letter from the FAA, which states that the proposed height (either under the existing layout of the airport or under any planned reorientation or lengthening of the airport runways) will not constitute a danger to the safety of air passengers or disrupt established airways; and

WHEREAS, accordingly, the Board finds that the proposal will not constitute a hazard to the safety of the occupants of such proposed building, to other buildings in the vicinity or to the safety of air passengers, and would not disrupt established airways; and

WHEREAS, the Board finds, consistent with ZR § 73-03, that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, further, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; and

WHEREAS, the project is classified as a Unlisted action pursuant to Sections 617.2 and 617.6 of 6NYCRR; 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-072Q, dated June 3, 2014; 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; and

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 ZR § 72-21, 73-66, and 73-03, to permit, on a site partially within an R7-1 (C1-2) zoning district and partially within an R7-1 zoning district, the construction of a 18-story mixed community facility and commercial building to be occupied as a transient hotel (Use Group 5) with 180 rooms and an ambulatory diagnostic or treatment health care facility (Use Group 4), contrary to the use and height regulations set forth in ZR §§ 22-10 and 61-20, *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 June 13, 2014" – twenty-one (21) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: 18-stories; a maximum of 156,154 sq. ft. of floor area (4.8 FAR)(44,895 sq. ft. of community facility floor area (1.38 FAR) and 111,259 sq. ft. of commercial floor area (3.42 FAR)); a maximum total building height of 229'-6" (243'-0", including bulkheads); a maximum of 31-percent lot coverage; a minimum rear yard depth of 60'-0"; two side yards with minimum widths of 8'-0" in the commercial portion of the building; 180 hotel rooms; and 300 accessory parking spaces;

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 will be considered approved only for the portions related to the specific relief granted; and

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

THAT DOB 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, June 17, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, June 17, 2014.

Printed in Bulletin No. 25, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

