

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance (§72-21) to allow a UG3 college (*Metropolitan College of New York*) within a proposed mixed use building, contrary to use regulations (§44-00). M1-1/C4-4 zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 14, 2013, acting on DOB Application No. 220150869, reads in pertinent part:

Proposed college, UG 3A, within the M1-1 district portion of the zoning lot is not permitted; contrary to ZR 42-10; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site partially within a C4-4 zoning district and partially within an M1-1 zoning district, the construction of a two-story mixed commercial (Use Group 6) and community facility (Use Group 3) building, contrary to the use regulations set forth in ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in *The City Record*, with continued hearings on May 6, 2014, May 20, 2014, and June 10, 2014, and then to decision on June 24, 2014; and

WHEREAS, the premises 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 1, Bronx, recommends approval of the application; and

WHEREAS, this application is being brought on behalf of Metropolitan College of New York (“MCNY”), a non-profit educational institution, which will occupy the proposed building; and

WHEREAS, the subject site is triangular lot located on the northwest corner of the intersection of East 149th Street and Brook Avenue, partially within a C4-4 zoning district and partially within an M1-1 zoning district; and

WHEREAS, the site has approximately 291 feet of frontage along East 149th Street, approximately 319 feet of frontage along Brook Avenue, and 67,881 sq. ft. of lot area; and

WHEREAS, the site’s triangular shaped is thus

formed by the intersection of East 149th Street and Brook Avenue, and the diagonal site boundary connecting these streets (the hypotenuse of the triangle), which abuts an MTA right-of-way where railroad tracks for the 2 and 5 subway lines emerge from underground; and

WHEREAS, the applicant notes that the C4-4/M1-1 district boundary runs roughly parallel to East 149th Street and divides a small portion of the northeast corner of the site; thus, 12 percent of the lot area (8,358 sq. ft.) is within the M1-1 portion of the site and 88 percent of the lot area (59,523 sq. ft.) is within the C4-4 portion of the site; and

WHEREAS, the applicant states that the site is currently used as a parking lot for motor vehicles; and

WHEREAS, the applicant proposes to construct a two-story mixed commercial and community facility building with 85,220 sq. ft. of floor area (1.4 FAR), including 61,697 sq. ft. of commercial floor area (Use Group 6) and 23,523 sq. ft. of community facility floor area (Use Group 3); and

WHEREAS, in addition, the applicant notes that, on June 18, 2013, under BSA Cal. No. 73-13-BZ, the Board granted a special permit pursuant to ZR § 73-49 to permit accessory parking for 87 automobiles on the rooftop of the proposed building; and

WHEREAS, the applicant states that the majority of the first story of the building and a portion of the second story will be occupied by a supermarket, a restaurant, retail space, and offices; MCNY will occupy a small portion of the first story (2,528 sq. ft.) and the remainder of the second story (22,715 sq. ft. of floor area), including a 808 sq.-ft. portion within the M1-1 portion of the site; and

WHEREAS, the applicant states that MCNY will use a small portion of the first story as an entrance lobby with administrative offices, and the second story to accommodate classroom space for up to 410 students and assembly space for up to 590 students, with a total simultaneous maximum occupancy of 927 persons; the space will include folding walls to allow flexibility in classroom size and configuration, which will enable MCNY to host guest speakers and hold conferences, internship fairs, and job fairs; the second story will also include three computer classrooms, 17 regular classrooms, one media lab, and student and faculty lounges; and

WHEREAS, because Use Group 3 is not permitted as-of-right in an M1-1 district, the applicant seeks a use variance for the 808 sq.-ft. portion of the building on the second story; and

WHEREAS, the applicant states that the triangular shape of the site and the location of the district boundary line are a unique physical conditions, which create practical difficulties and unnecessary hardships in developing the site in conformance with underlying zoning regulations in manner that satisfies MCNY’s programmatic needs as an educational institution; and

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WHEREAS, the applicant states, as noted above, that the site triangular in shape due to the MTA right-of-way that forms the northwest boundary of the site; and

WHEREAS, as such, the applicant asserts that, a triangular building is the most efficient design to develop the site; and

WHEREAS, in addition, as described above, the location of the district boundary between the C4-4 portion of the site and the M1-1 portion of the site serves to isolate a small portion of the site and, thus, the building, in the M1-1 district; and

WHEREAS, nevertheless, the applicant states that MCNY requires use of the portion of the building within the M1-1 district in order to satisfy its programmatic needs; and

WHEREAS, in particular, the applicant represents that in order for the second story to have complying egress under the Building Code for the number of occupants MCNY proposes (more than 499 students), it must have three means of egress with a maximum travel distance of 250'-0" or less, and locate one of the means of egress within the M1-1 portion of the building; and

WHEREAS, the applicant examined the following as-of-right scenarios, in which MCNY did not use the M1-1 portion of the building: (1) removing the third means of egress entirely, which reduces the simultaneous classroom occupancy from 410 students to 263, prevents the usage of assembly space by more than 499 students when the classrooms are not in use and usage of the assembly space at all when classrooms are in use, and eliminates seven classrooms; (2) placing all three means of egress within the C4-4 portion of the building, which reduces the simultaneous classroom occupancy to 360 students, renders the M1-1 portion of the second story unusable, due to its lack of ADA accessibility and second means of egress, and results in a loss of three classrooms and eight computer terminals within the media lab; and (3) aligning the second-story MCNY space with the East 149th Street side of the building; and

WHEREAS, the applicant states that this third scenario carries the most disadvantages, in addition to being impractical since MCNY does not hold a lease for this portion of the building; first, this scenario will allow for only two means of egress, which reduces the simultaneous classroom occupancy from 410 students to 263, and prevents the usage of assembly space by more than 499 students when the classrooms are not in use and usage of the assembly space at all when classrooms are in use; second, this portion of the building is not suitable for classroom space due to the shortage of windows and the practical difficulties created by constructing classroom space along an curving building wall (rectangular floorplates are preferable for classroom layouts); third, using this portion of the building will result in the creation of two unusable areas (a total of 17,269 sq. ft. of floor area) of the second story due to a lack of ADA accessibility; and

WHEREAS, thus, the applicant states that none of the as-of-right scenarios enables MCNY to fulfill its programmatic needs to allow sufficient space for its

students, faculty, and staff; and

WHEREAS, the Board acknowledges that MCNY, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, accordingly, based upon the above, the Board finds that, consistent with ZR § 72-21(a), the triangular shape of the site and location of the C4-4/M1-1 district boundary, when considered in conjunction with the programmatic needs of MCNY, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since MCNY is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the proposed use of 808 sq. ft. of floor area in the M1-1 portion of the site by MCNY 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 states that the surrounding area is characterized by its diversity; and includes industrial and commercial uses, such as the nearby regional retail and business district known as "The Hub", multiple dwellings, and large community facilities; thus, the introduction of MCNY will complement the neighborhood varied character; and

WHEREAS, likewise, the applicant asserts that the placement of 808 sq. ft. of community facility floor area within the M1-1 district will be compatible with the nearest conforming use, which is the large community facility across Brook Avenue; the applicant also notes that the majority of nearby land within the subject M1-1 district is either occupied by the railroad or undeveloped; and

WHEREAS, the applicant notes that the proposal has garnered the support of numerous elected officials and community groups, including the community board and the Bronx Overall Economic Development Corporation, and is an important component of the Bronxchester Urban Renewal Plan and the South Bronx Initiative Plan; and

WHEREAS, the applicant notes that, aside from the requested use variance and the rooftop parking authorized by the Board under BSA Cal. No. 73-13-BZ, the proposal complies in all respects with the applicable bulk regulations; and

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WHEREAS, accordingly, the Board finds that, per ZR § 72-21(c), 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; and

WHEREAS, the Board finds that, per ZR § 72-21(d), the hardships of the site were not self-created and that a conforming development of the site would not satisfy the programmatic needs of MCNY; and

WHEREAS, the Board also finds that, consistent with ZR § 72-21(e), the requested use waiver is the minimum necessary to afford MCNY the relief it needs to satisfy its programmatic needs; 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 project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Mayor’s Office of Environmental Coordination (“MOEC”) has conducted an environmental review of the proposed action to determine if the proposal would result in any significant adverse environmental impacts that were not previously identified in the January 2012 Triangle Plaza Hub Environmental Assessment Statement (CEQR No. 11DME011X) or in the subsequent Technical Memorandum issued on May 17, 2013; and

WHEREAS, MOEC recommends in a May 6, 2014 Technical Memorandum that the developer provide a staff person (i.e. flag person) at the project’s Brook Avenue driveways to ensure safety for pedestrians, cyclists and motorists; and

WHEREAS, MOEC also recommends in the Technical Memorandum that the proposed building be required to meet an increase in attenuation requirements of 45 dBA or lower, rather than the 50 dBA previously required; and

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

Therefore it is Resolved, that the Board of Standards and Appeals adopted the findings of the May 6, 2014 Technical Memorandum 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 partially within a C4-4 zoning district and partially within an M1-1 zoning district, the construction of a two-story mixed

commercial (Use Group 6) and community facility (Use Group 3) building, contrary to the use regulations set forth in ZR § 42-10; *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 May 28, 2014” – Fifteen (15) sheets; and *on further condition:*

THAT the building parameters will be: two stories; a maximum floor area of 85,220 sq. ft. (1.4 FAR); a maximum of 61,697 sq. ft. of commercial floor area and a maximum of 23,523 sq. ft. of community facility floor area, as illustrated on the BSA-approved plans;

THAT a staff person (i.e. flag person) be provided at the building’s Brook Avenue driveways to ensure safety for pedestrians, cyclists and motorists;

THAT the proposed community facility uses in the building be required to provide attenuation levels of 31 dBA along the East 149th Street and Brook Avenue façades, and attenuation measures of 33 dBA along the rear façades of the building, which face the subway tracks, to maintain interior noise levels of 45 dBA or lower;

THAT the proposed commercial uses in the building be required to provide attenuation levels to ensure an interior noise environment of 50 dBA;

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;

THAT construction will proceed in accordance with ZR § 72-23; and

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 24, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, June 24, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

