

***CORRECTION**

The resolution adopted on April 29, 2014, under Calendar No. 246-13-BZ and printed in Volume 99, Bulletin Nos. 16-18, is hereby corrected to read as follows:

**246-13-BZ
CEQR #14-BSA-025K**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lutheran Medical Center, owner.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit the enlargement of an existing ambulatory diagnostic treatment health facility (UG4), contrary to floor area (§24-11) and rear yard (§24-36) regulations. R6B/C4-3A zoning districts.

PREMISES AFFECTED – 514 55th Street, south side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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 Executive Zoning Specialist of the Department of Buildings (“DOB”), dated July 22, 2013, acting on DOB Application No. 320590339, reads in pertinent part:

1. Floor area in R6B lot portion exceeds the maximum permitted; contrary to ZR 24-11;
2. Enlargement in the required rear yard is not permitted; contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within an R6B zoning district and partially within a C4-3A zoning district, the horizontal enlargement of the basement and first story of a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) that exceeds the maximum permitted floor area ratio (“FAR”) and does not provide the minimum required rear yard in the R6B portion of the site, contrary to ZR §§ 24-11 and 24-36; and

WHEREAS, a public hearing was held on this application on March 11, 2014, after due notice by publication in the *City Record*, with a continued hearing on April 8, 2014, and then to decision on April 29, 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, this application is brought on behalf of Lutheran HealthCare, a not-for-profit institution; and

WHEREAS, Community Board 7, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a rectangular interior lot located on the south side of 49th Street between Fifth Avenue and Sixth Avenue, partially within an R6B

zoning district and partially within a C4-3A zoning district; and

WHEREAS, the site has 191 feet of frontage along 49th Street, a lot depth of 100.17 feet, and a lot area of 19,131 sq. ft.; and

WHEREAS, the site is divided by a zoning district boundary, with the westernmost ten feet of the site for its full depth is located within a C4-3 zoning district and the remainder of the lot located within an R6B zoning district; and

WHEREAS, the site is occupied by a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) with 35,378 sq. ft. of floor area (1.8 FAR); the facility is operated by Lutheran HealthCare (“LHC”) and known as the Sunset Terrace Family Health Center (“STFHC”); and

WHEREAS, the applicant notes that the facility was completed in 1960 and underwent its only major renovation in 1977; and

WHEREAS, the applicant proposes to enlarge the basement and first story at the rear of the building, which will increase the floor area from 35,378 sq. ft. (1.8 FAR) to 40,912 sq. ft. (2.14 FAR); and

WHEREAS, the applicant states that the basement enlargement will comprise 2,637 sq. ft. of floor area and provide space for offices, staff room, storage and mechanical equipment; the first story enlargement will comprise 2,997 sq. ft. of floor area and will provide space for examination rooms, additional offices, work stations, and restrooms; and

WHEREAS, the applicant states that a variance is requested because the proposed enlargement will exceed the maximum permitted floor area for the site (39,263 sq. ft. (2.05 FAR)) and will extend the existing non-complying rear yard depth of 11 feet for the full width of the building; and

WHEREAS, the applicant notes that LHC, which operates STFHC, has served the ethnically diverse, medically underserved neighborhoods of central and southwest Brooklyn for more than 40 years, and that the official LHC service area includes approximately 700,000 residents (28 percent of the total Brooklyn population); and

WHEREAS, the applicant states that STFHC is facing a large influx of patients due to three factors: (1) the closure or threatened closure of nearby health systems and hospitals, such as Long Island Hospital, Brookdale Hospital, and Interfaith Medical Center; (2) the initiation of the New York Health Home system (under the requirements of the New York State Medicaid Redesign Team), which requires coordination of mental illness treatment with medical treatment; and (3) the implementation of family homeless services; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the zoning lot, which, in accordance with ZR § 72-21(a), create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the history of community facility use at the site and obsolescence of the building at the site for such use (including the outmoded configuration of its floorplates); and (2) the programmatic needs of LHC; and

WHEREAS, as noted above, the applicant states that LHC has been providing health services at the site for decades in a building that was constructed in 1960; as

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such, community facility use at the site is well-established; and

WHEREAS, the applicant notes that the building was constructed without a cellar; therefore, it must use above-grade spaces for common below-grade uses such as storage of materials and mechanical equipment; and

WHEREAS, in addition, the applicant states that the building was last renovated in 1977 and its layouts include redundancies and inefficiencies (such as a single entrance for all patients), which interfere with LHC's ability to provide quality health care; and

WHEREAS, the applicant states that the building must expand to satisfy LHC's programmatic needs, including providing: (1) proper separation of offices, storage space, and staff rooms from patient services; (2) expansion of the primary care areas; (3) establishment of dental care program space; (4) expansion of behavioral health patient areas; (5) separation of patients by health care need; and (6) for the elimination of the joint reception area, which is undesirable given the diversity of the services offered by LHC; and

WHEREAS, the applicant also states that remaining in the building is critical to the care STFHC provides to the surrounding community because many of its patients live nearby and cannot travel long distances for services; and

WHEREAS, the applicant contends that providing some services at the site and others offsite would substantially interfere with patient care, require duplication of non-patient spaces, services, and staff, and be inconsistent with the recommendations of the New York State Medicaid Redesign Team; and

WHEREAS, similarly, the applicant represents that relocating the facility entirely is not possible because there are no comparable buildings or sites within Sunset Park and that the vast majority of lots in the area (both vacant and occupied) have lot areas of approximately 2,000 sq. ft.—well below the size that would be needed to accommodate a suitable building for STFHC; and

WHEREAS, the applicant explored the feasibility of the following as-of-right development scenarios: (1) a three-story rear enlargement for a depth of 14 feet ("Scenario 1"); (2) a four-story enlargement to the west side of the building ("Scenario 2"); and (3) a complete renovation of the entire building, including significant demolition and reconstruction ("Scenario 3"); and

WHEREAS, the applicant states that Scenario 1 would not allow for the additional examination rooms and corridors due to its limited depth and it would not alleviate the entrance bottleneck caused by the single patient entrance; in addition, it would require the placement of medical examination and dental examination rooms on separate levels and would prevent the consolidation of staff spaces and instead separate such spaces by several stories with only one elevator connecting them; and

WHEREAS, the applicant states that Scenario 2 would result in approximately 60 percent less new program space than the proposal, resulting in a reduction and/or elimination of programs and funding; further, Scenario 2 would require reconfiguration of the boiler room, relocation of an egress stair, and the installation of a new sprinkler system, at significant cost; and

WHEREAS, as for Scenario 3, the applicant represents that it is not viable due to the costs involved and the significant disruptions in patient care; and

WHEREAS, accordingly, the applicant asserts that the building's inefficiencies and LHC's programmatic needs are best addressed with the proposed horizontal enlargement; and

WHEREAS, based upon the above, the Board finds that the history of community facility use at the site and the obsolescence of the building, when considered in conjunction with the programmatic needs of LHC, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since LHC 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 variance, if granted, 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 neighborhood is characterized by a mix of low- to medium-density residential, community facility, and, where permitted, commercial uses; and

WHEREAS, the applicant states that the site has been occupied by a medical facility for more than 50 years, that Use Group 4 is permitted as-of-right in the subject zoning districts (R6B and C4-3A), and that the operator of the facility is an organization with significant ties to the community; and

WHEREAS, as to adjacent properties, the applicant states that there are mixed residential and commercial buildings along Fifth Avenue to the west of the site, and residential buildings to the north, east, and south of the site; and

WHEREAS, the applicant states that the proposed enlargement is a continuation of the building's existing, non-complying rear yard depth of 11 feet and that its impact upon the residences to the south is mitigated by the fact that those buildings provide complying rear yards with depths of 30 feet and are separated from the site by a retaining wall and a fence; and

WHEREAS, as to the FAR waiver, the applicant asserts that while it is modest (the proposal seeks 0.09 FAR greater than is permitted at the site), a noted above, the additional floor area is essential to LHC's ability to carry out its programmatic needs; further, the additional floor area will be located entirely within the rear of the site, will have no impact on the building's overall height, number of stories or appearance from the street, and is within the ten-percent increase in floor area permitted by special permit under ZR § 73-63 (*Enlargement of Non-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 applicant states that the hardship was not self-created and that no development that

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would meet the programmatic needs of LHC could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that, per ZR § 72-21(d) the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board also finds that the requested relief is the minimum necessary, in accordance with ZR § 72-21(e); and

WHEREAS, thus, 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 Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-025K, dated August 14, 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 prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 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 variance, to permit, on a site located partially within an R6B zoning district and partially within a C4-3A zoning district, the horizontal enlargement of the basement and first story of a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) that exceeds the maximum permitted floor area ratio ("FAR") and does not provide the minimum required rear yard in the R6B portion of the site, contrary to ZR §§ 24-11 and 24-36; *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

A true copy of resolution adopted by the Board of Standards and Appeals, April 29, 2014.

Printed in Bulletin Nos. 16-18, Vol. 99.

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**

"Received November 26, 2013" –(5) sheets; and *on further condition;*

THAT the following shall be the bulk parameters of the building: a maximum of 40,912 sq. ft. (2.14 FAR) and a minimum rear yard depth of 11'-0", as indicated on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to 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) 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, April 29, 2014.

The resolution has been amended. Corrected in Bulletin No. 20, Vol. 99, dated May 21, 2014.

