

**154-13-BZ**  
**CEQR #13-BSA-138K**

APPLICANT – Sheldon Lobel, P.C., for Ralph Avenue Associates, LLC, owner.

SUBJECT – Application May 14, 2013 – Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 8341, Lot (Tentative lot 135), Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

**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 Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated May 10, 2013, acting on DOB Application No. 320688029, reads, in pertinent part:

Proposed commercial building cannot be built in R5 zone, per Section 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the construction of a one-story commercial building (Use Group 6), contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in the *City Record*, with continued hearings on December 10, 2013 and January 14, 2014, and then to decision on February 4, 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 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site includes all of Block 8341, which comprises Lots 100, 113, 118, 120, 121, and 125 and is bounded by Ralph Avenue, East 73rd Street, Bergen Avenue, and Avenue K; and

WHEREAS, the site, which is wholly within an R5 zoning district, has 237.76 feet of frontage along Ralph Avenue, 567.51 feet of frontage along East 73rd Street, 696.15 feet of frontage along Bergen Avenue, 200 feet of frontage along Avenue K, and a lot area of 127,535 sq. ft.; in addition, a sewer easement encumbers a portion of the site for the full length of Ralph Avenue; and

WHEREAS, the site is occupied by six, three-story residential buildings with a total of 159,418 sq. ft. of floor area (1.25 FAR) and 144 dwelling units (affordable housing), and 167 parking spaces (the “Development”); 51 of the parking spaces are driveway spaces appurtenant to the buildings, 51 are within the buildings, and 65 are provided for-pay in an at-grade v-shaped parking lot in

portions of Lots 118 and 121 along Ralph Avenue and Bergen Avenue (the “Parking Lot”); and

WHEREAS, the applicant represents that, in connection with this application, a new tax lot, Lot 135, will be formed within the site from the northwest portions of Lots 118 and 112; Lot 135 will have 162.16 feet of frontage along Bergen Avenue, 170.43 feet along Ralph Avenue, and approximately 16,500 sq. ft. of tax lot area; and

WHEREAS, the applicant states that the Development was completed around 2006 and included a partial build-out of three mapped but unbuilt public roadways (Bergen Avenue, Avenue K, and East 73rd Street); and

WHEREAS, the applicant notes that the Development was financed through the New York City Housing Development Corporation’s (“HDC”) New Housing Opportunities Program (“NewHOP”), with a required debt-service-coverage-ratio (“DSCR”) of 1.20, and in order to satisfy the DSCR for the site, the Development’s revenue stream included revenue from the Parking Lot; however, in 2011, the City widened Bergen Avenue and installed 70 angled, unmetered parking spaces; and

WHEREAS, accordingly, the applicant represents that revenue from the Parking Lot has sharply declined, the applicant’s ability to cover the 1.20 DSCR is in jeopardy, and, absent the requested relief, an affordable housing project is in danger of mortgage default; and

WHEREAS, therefore, in order to offset the lost revenue from the Parking Lot and to appropriately account for the unique hardships inherent in the original development of the site, the applicant proposes to construct on Lot 135 a one-story commercial building (Use Group 6) with 5,162 sq. ft. of floor area (0.04 FAR) and an accessory parking lot with 18 spaces; and

WHEREAS, because Use Group 6 is not permitted within the subject R5 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lack of adjacent sewer lines; (2) the existence of a sewer easement, which prohibits construction on the westernmost portion of the site; (3) the requirement to construct abutting public roadways; and (4) the historic use of a portion of the site for a dumping ground; and

WHEREAS, the applicant states that when the Development was constructed, the site lacked adjacent sewer lines along Bergen Avenue and East 73rd Street, and the nearest connectible sanitary sewer ran down Ralph Avenue, along the western portion of the site; as such, the developer had to construct an on-site private sewer line running the full length of Block 8341, as well as a pumping station with sewage grinders and an emergency generator, and 69 drywells for storm water management, at significant cost; and

WHEREAS, the applicant states that the costs associated with the construction of the sanitary and storm

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sewer systems were further increased by the existence of a 120-inch sewer main running parallel to Ralph Avenue and a related sewer easement, which extends for a depth of 60 feet into the site; such easement also constrained where the residential buildings could be located, making two of the six buildings further from the main than would have been required if there were no easement; and

WHEREAS, the applicant asserts that the site was also uniquely burdened by having to build out portions of mapped but unbuilt Bergen Avenue, Avenue K, and East 73rd Street; and

WHEREAS, finally, the applicant contends that illegal dumping at the site prior to the construction of the Development was a unique physical condition that created an unnecessary hardship in developing the site; in particular, when the site was originally acquired, it was an abandoned construction site with in-place foundations filled with dirt, debris, and garbage; accordingly, the site required considerable soil excavation and removal as well as special removal and disposal of the landfill-type garbage that had accumulated at the site; such operations increased construction costs beyond that which would have been typical for a similarly-sized project; and

WHEREAS, the Board finds that the site's lack of adjacent sewers, encumbrance by a sewer easement, lack of built-out abutting public roadways, and historic use as a dumping ground created an unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning 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, in particular, the applicant states that because the site was developed through HDC financing and the NewHOP program, it must adhere to the 1.20 DSCR while providing affordable housing at the site; as originally conceived, the Development's revenue—including the Parking Lot revenue—was sufficient to cover the DSCR; however, with the decline of the Parking Lot revenue due to the availability of free parking spaces along Bergen Avenue, the applicant states that it can no longer offset the premium costs for developing the site; and

WHEREAS, the applicant explored the feasibility of constructing an additional residential building on a portion of Lot 121, east of the sewer easement; in addition to requiring a variance for floor area (the site is already at the maximum permitted FAR of 1.25), a new residential building on the site would have too few units to satisfy NewHOP requirements; and

WHEREAS, therefore, the applicant states that only the proposal will generate the amount of revenue necessary to maintain the 1.20 DSCR and avoid a mortgage default; and

WHEREAS, in support of this statement, the applicant submitted a financial analysis, which studied the Development's DSCR in light of the declining revenues of the Parking Lot and the projected revenues of

the proposed commercial building; and

WHEREAS, the applicant concluded that the proposal will allow the Development to maintain the required DSCR, which in light of the unique financing of the Development, is tantamount to providing a positive rate of return; and

WHEREAS, at hearing, the Board directed the applicant to provide detailed information regarding: (1) the structure of its financing; and (2) its construction costs associated with the site's unique conditions; and

WHEREAS, in response, the applicant provided an itemized and annotated timeline of the Development's costs and financing, and a copy of its builder's pavement plan (depicting the extent of the roadway construction) and its site drainage plan (depicting the sanitary and storm sewer systems); and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject lot'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 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 immediate area is characterized by a mix of low- to medium-density residential and commercial uses with some manufacturing/industrial uses, including a large water treatment facility across Bergen Avenue; and

WHEREAS, in support of this statement, the applicant submitted a land use map and photographs depicting the mixed-use nature of the neighborhood; based on the map, the proposed commercial building will be immediately adjacent to either parking areas or commercial (across Ralph Avenue) or industrial uses (across Bergen Avenue); and

WHEREAS, as to bulk, the applicant states that the proposed commercial building is smaller or comparable to other buildings (both residential and commercial) located along Ralph Avenue; and

WHEREAS, in addition, the applicant asserts that the bulk of the building is modest in comparison to what is permitted in the C2-2 district mapped directly across Ralph Avenue from the site; specifically, if the proposed building on Lot 135 were considered to be on its own zoning lot, as noted above, its lot area would be 16,031 sq. ft. and its FAR would be 0.32, which represents less than one-third of the 1.0 FAR permitted in a C2-2 district; and

WHEREAS, likewise, the applicant states that the proposed wall height of 18 feet is 12 feet less than the maximum permitted wall height (30 feet) in the C2-2 district; also, while there are no yard regulations for a commercial building in an R5 district, the building has a yard facing Bergen Avenue with a width of approximately five feet and a yard facing Ralph Avenue with a width of approximately 57 feet; further, there is a

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40-foot separation between the proposed building and the nearest dwelling; and

WHEREAS, as to parking, the proposal would allocate 18 parking spaces for the commercial portion of the site and maintain 123 parking spaces for the residences, which is in accordance with ZR § 25-23 and would be in accordance with ZR § 36-21, if the commercial use were permitted; further, as noted above, Bergen Avenue has 70 angled parking spaces directly abutting the site; and

WHEREAS, therefore, the applicant asserts that the proposal is compatible with the surrounding neighborhood in terms of use and bulk, and will have no impact on parking; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of a one-story commercial building and parking lot will not impact nearby conforming uses; 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

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-138K, dated May 13, 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, 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 under ZR § 72-21 and grants a variance, to permit, within an R5 zoning district, the construction of a one-story commercial building (Use Group 6), contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings filed with this application marked "Received September 18, 2013"– (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: one story; a maximum of 5,162 sq. ft. of floor area (0.04 FAR); side yards with minimum depths of five feet and 57 feet; a maximum wall height of 18 feet; and accessory parking for 18 automobiles;

THAT no fewer than 141 parking spaces (123 accessory to residences and 18 accessory to the commercial building) will be provided at the site;

THAT signage will comply with C1 regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT substantial construction will 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 will be considered approved only for the portions related to the specific relief granted; 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, February 4, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, February 4, 2014.**

**Printed in Bulletin No. 6, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

