

**319-13-BZ**

**CEQR #14-BSA-081M**

APPLICANT – Herrick, Feinstein LLP, for Harlem Park Acquisition, LLC, owner.

SUBJECT – Application December 17, 2013 – Variance (§72-21) to waive the minimum parking requirements (§25-23) to permit the construction of a new, 682 unit, 32-story mixed used building. 123 parking spaces are proposed. C4-7 zoning district.

PREMISES AFFECTED – 1800 Park Avenue, Park Avenue, East 124th street, East 125 Street, Block 1749, Lot 33 (air rights 24), Borough of Manhattan.

**COMMUNITY BOARD #11M**

**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 Department of Buildings, dated December 12, 2013, acting on Department of Buildings Application No. 121237303, reads in pertinent part:

ZR 25-23 – Required number of parking spaces not provided for number of dwelling units (UG 2) proposed; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C4-7 zoning district, within the Special 125th Street District, the construction of a 32-story mixed residential and commercial building that does not comply with the zoning requirements for parking, contrary to ZR § 25-23; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 20, 2014, and then to decision on June 10, 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 11, Manhattan, recommends approval of this application; and

WHEREAS, Congressman Charles B. Rangel and Assemblyman Robert J. Rodriguez provided testimony in support of the application; and

WHEREAS, the subject site occupies the eastern portion of the block bounded by East 124th Street, Madison Avenue, East 125th Street, and Park Avenue; and

WHEREAS, the site comprises Tax Lots 24 and 33, has 315 feet of frontage along East 125th Street, 215 feet of frontage along East 124th Street, approximately 202 feet of frontage along Park Avenue, and 53,486 sq. ft. of

lot area; and

WHEREAS, Lot 24 is occupied by a five-story building with 46,098 sq. ft. of floor area (0.86 FAR) utilized by the New York College of Podiatric Medicine; Lot 33 is vacant; the applicant represents that the owner of Lot 24 has transferred its 162,798 sq. ft. of unused floor area to Lot 33; and

WHEREAS, the applicant proposes to construct on Lot 33 a 32-story mixed residential and commercial building with 595,734 sq. ft. of floor area (11.14 FAR), 55,722 sq. ft. of commercial floor area, 682 dwelling units, and 123 accessory parking spaces; and

WHEREAS, the applicant states that pursuant to ZR § 25-23, one parking space is required for 40 percent of the 682 new dwelling units; thus, 273 parking spaces are required; and

WHEREAS, the applicant seeks a variance to provide only 123 accessory parking spaces; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of the Metro North railway viaduct and station; (2) the proximity of the Second Avenue subway line; and (3) subsurface conditions, including a deep bedrock elevation, the presence of groundwater, which will require substantial dewatering prior to construction of the foundation, and significant contamination, and; and

WHEREAS, the applicant states that the nearby presence of the Metro North railway viaduct and station uniquely impacts the site and will result in premium construction costs; and

WHEREAS, in particular, the applicant states that the site is bounded by the elevated Metro North railway viaduct and station, which extends from East 124th Street to East 126th Street, and that, in the area adjacent to the site, the viaduct and station are supported by a steel platform on steel bents spaced every 65 feet, which are supported by five columns, which are in turn supported by eight-feet-long by eight-feet-wide pier foundations, five of which are located within the sidewalk along East 125th Street approximately ten feet from the site’s eastern property line; and

WHEREAS, the applicant notes that, according to the engineering consultant’s report (the “Langan Report”), the pier foundation for the station extends approximately 14.5 feet to 18.5 feet below sidewalk grade and is supported on uncontrolled fill material; accordingly, the applicant asserts that development of the site requires special excavation procedures and a specialized foundation system in order to protect the Metro North structures, at significant cost; and

WHEREAS, the applicant contends that its proximity to the Metro North station and its support columns is unique, in that only four blocks along Park Avenue from East 123rd Street to East 126th Street, have

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a similar condition; and

WHEREAS, the applicant states that the proximity of the Second Avenue subway line will include the construction of an underground station under East 125th Street extending from Third Avenue to mid-block between Park Avenue and Madison Avenue and that such proposed station creates unique hardships in the development of the site; and

WHEREAS, specifically, the applicant states that future station and subway tunnels will be directly adjacent to the site's northern property line; as such, it is expected that the New York City Transit Authority will require certain easements, including a permanent easement for the space below the cellar of any new building at the site (for the installation of rock anchors to support the subway station) and a temporary easement at the cellar and ground level during the construction period of the station; and

WHEREAS, in addition, the applicant states that, based on the Langan Report, the Transit Authority will likely require transfer of all foundation loads beyond the theoretical influence line; further, per the Langan Report, the applicant must employ a specialized foundation installation procedure involving the drilling of a permanent steel casing to the top of rock, coring a hole in the rock, advancing casing to the influence line, and then drilling a rock socket below the influence line, in order to prevent any shedding of gravity loads to the rock adjacent to the tunnels; accordingly, the applicant states that protecting the Second Avenue subway line will significantly increase its construction costs; and

WHEREAS, in addition, the applicant notes that pile driving is not permitted within 50 feet of the structural boundary of either the Metro North station or the Second Avenue subway tunnel; as such, an alternative, more expensive foundation system must be employed; and

WHEREAS, further, the applicant asserts that even if adjacency to a subway line is not a unique site condition in the surrounding neighborhood, adjacency to both a subway line *and* an elevated train station is unique; and

WHEREAS, as to the subsurface conditions, the applicant states that, based on the Langan Report, the bedrock at the site ranges from 59 feet to 110 feet below grade, which is 80 percent deeper than the bedrock at surrounding sites; as such, in addition to being more technically complex due to the presence of subway tunnels and above-ground structures, the foundation must be deeper than typical foundations; and

WHEREAS, in addition, the applicant states that the Langan Report identified groundwater at depths ranging from 10 feet to 15 feet below grade; thus, dewatering prior to the construction of the foundation will be required; and

WHEREAS, as to contamination, the applicant states that the New York State Department of Environmental Conservation has classified the site as a Brownfields Cleanup Site due to the presence of elevated concentrations of metals, polynuclear aromatic hydrocarbons, polycyclic chlorinated biphenyls, and lead at concentrations that make it hazardous waste; additionally, a level of petroleum has been identified atop the water table; as such, the applicant represents that approximately 35,000 tons of soil will need to be excavated from the site and properly disposed of, and a vapor barrier must be constructed beneath the foundation to prevent the migration of contaminants; and

WHEREAS, the applicant represents that the total cost premium resulting from the site's unique physical conditions are \$16,627,727 and that such cost involves the construction of only one below-grade level; and

WHEREAS, accordingly, the applicant states that the construction of one or more sub-cellars to accommodate parking is not feasible due to the site's unique physical conditions; and

WHEREAS, likewise, the applicant asserts that it is not feasible to locate parking within above-grade portions of the building because doing so would require elimination of valuable retail space, which is necessary to offset the premium construction costs noted above; and

WHEREAS, to support this assertion, the applicant analyzed a complying building with 32 stories, 595,734 sq. ft. of floor area (11.14 FAR), one retail story (21,912 sq. ft. of commercial floor area), 682 dwelling units and 304 parking spaces ("Scenario A"); thus, the Scenario A building is similar to the proposal all respects except the number of parking spaces and the amount of retail space; and

WHEREAS, thus, the applicant contends that there is a direct nexus between the physical hardships of the site and the requested parking waiver; and

WHEREAS, based upon the above, the Board finds that the site's adjacency to the Metro North railway viaduct and station and the Second Avenue subway line and the site's many subsurface conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance 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 support of this assertion, the applicant submitted a feasibility study that analyzed Scenario A and the proposal; and

WHEREAS, in addition, in response to the Board's comments, the applicant examined two other alternative scenarios with larger dwelling units: (1) a complying development with 32 stories, 595,734 sq. ft. of floor area (11.14 FAR), two retail stories, 307 dwelling units, and 123 parking spaces; and (2) a complying development

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with only 30 stories, 360,790 sq. ft. of floor area (6.75 FAR), two retail stories, 307 dwelling units, and 123 parking spaces; and

WHEREAS, the applicant concluded that only the proposal would realize a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that development in strict compliance 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 surrounding neighborhood is characterized by its diversity; the area has low-, medium-, and high-density residential and community facility buildings, with ground floor retail uses along both East 125th Street and Park Avenue; and

WHEREAS, the applicant states that the intersection of Park Avenue and East 125th Street is a vibrant commercial intersection, which is well-served by public transit and heavily trafficked by pedestrians and automobiles alike; and

WHEREAS, as to adjacent uses, the applicant states, as noted above, that the site shares occupies the same zoning lot with as the New York College of Podiatric Medicine, which will be located directly west of the proposed building; the only other building adjacent to the site is a four-story multiple dwelling with ground floor retail; directly north of the site across East 125th Street is the historic Corn Exchange building, which is slated for redevelopment; directly east of the site is, as mentioned above, the elevated structure for the Metro North train; directly south of the site is a parking lot; and

WHEREAS, turning to bulk, the applicant represents that, with the exception of parking, the proposal complies in all respects with the bulk regulations applicable in the subject C4-7 zoning district; and

WHEREAS, as to parking, the applicant states that the site is well-served by several subway and bus lines, and the Metro North station and that number of parking spaces required for the development under ZR § 25-23 are unnecessary; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information regarding car ownership rates in the proposed building, off-street parking utilization, and parking supply; and

WHEREAS, in response, the applicant provided a study, which concluded: (1) based on census data and the

location of the site, the building's 682 dwelling units will contribute a parking demand of 118 vehicles (which the applicant notes is less than the 123 parking spaces proposed); (2) 40 percent of the households expected to occupy the proposed building are likely to utilize street parking rather than paying for a parking space within the building; and (3) on- and off-street parking supply within ¼ mile of the site is more than adequate to accommodate the parking demand generated by the proposed building; 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 due to the proximity of the Second Avenue subway, the Metro North station, and the subsurface conditions on the site; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with 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 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. 14-BSA-081M, dated March 26, 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, (E) designation No. E-201 regarding noise and air quality was placed on the subject property in conjunction with the rezoning of the property in April 30, 1008, under ULURP No. 080099ZMM; 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,

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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 to permit, on a site within C4-7 zoning district, within the Special 125th Street District, the construction of a 32-story mixed residential and commercial building that does not comply with the zoning requirements for parking, contrary to ZR § 25-23; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 6, 2014"– thirty (30) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 595,734 sq. ft. (11.14 FAR), a maximum of 682 dwelling units, and a minimum of 123 accessory parking spaces, as reflected on the BSA-approved plans;

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

THAT the approved plans shall 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, June 10, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, June 10, 2014.**

**Printed in Bulletin Nos. 22-24, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

