

279-12-BZ

CEQR #13-BSA-034Q

APPLICANT – Akerman Senterfitt LLP, for Baceleo Realty, owner.

SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a bank (UG 6) in a residential zoning district, contrary to §22-00. R4/R5B zoning district.

PREMISES AFFECTED – 27-24 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue, Block 4292, Lot 12, 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 Queens Borough Commissioner, dated August 22, 2012, acting on Department of Buildings Application No. 420511495, reads in pertinent part:

Office use (UG 6) in R4/R5B is contrary to ZR 22-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R4 zoning district and partially within an R5B zoning district, the construction of a two-story commercial building to be occupied as a bank (Use Group 6) with five accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 20, 2012, after due notice by publication in the *City Record*, with continued hearings on November 19, 2013 and December 17, 2013, and then to decision on January 28, 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 this application; and

WHEREAS, the subject site is located at the northwest corner of the intersection of College Point Boulevard and 28th Avenue, partially within an R4 zoning district and partially within an R5B zoning district; and

WHEREAS, the site has approximately 66 feet of frontage along College Point Boulevard, approximately 131 feet of frontage along 28th Street, and a lot area of 5,765 sq. ft. (1,845 sq. ft. within the R4 district and 3,919 sq. ft. within the R5B district); and

WHEREAS, the site is occupied by a vacant, two-story building with approximately 3,760 sq. ft. of floor

area; and

WHEREAS, the applicant represents that from approximately 1947 until 2011, the building and site were occupied by a gasoline and automotive service station (Use Group 16) on the first story and a single-family dwelling on the second story; the applicant notes that the site has been subject to the Board’s jurisdiction since 1947, when the Board granted a variance under BSA Cal. No. 359-47-BZ to permit the station; such grant expired in 1985 and was reinstated under BSA Cal. No. 5-00-BZ, for a term of ten years; the 2000 grant expired on October 3, 2010; and

WHEREAS, the applicant proposes to construct the following at the site: a two-story commercial building with 5,082 sq. ft. of floor area (0.88 FAR) to be occupied as a bank (Use Group 6); an accessory parking lot with five spaces; and a drive-through for bank services; and

WHEREAS, because Use Group 6 is not permitted within the subject residence districts (R4 and R5B, as noted above), the subject use variance is requested; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: (1) the site’s contamination; and (2) the site’s proximity to manufacturing uses; and

WHEREAS, the applicant states that underground gasoline storage tanks were maintained in connection with the gasoline and automotive service station, and that the presence of such tanks resulted in subsurface contamination; such contamination, in turn, led to the development and implementation of a remediation plan under the supervision of the New York State Department of Environmental Conservation; and

WHEREAS, in support of this statement, the applicant provided estimates of costs associated with remediation of the site; and

WHEREAS, as to the adjacency of manufacturing uses, the applicant states that the site is located directly across the street from M1-1 and M1-2 zoning districts, which are occupied with industrial uses that render the site unsuitable for conforming uses; and

WHEREAS, in particular, the applicant states that there are five corner lots (including the subject site) at the intersection of 28th Avenue and College Point Boulevard and that all five contain manufacturing, industrial or automotive uses; accordingly, a residential or community facility building would have to be offered at discounted rates that would be insufficient to offset the costs of remediation and the inefficiencies inherent in developing a trapezoidal site; and

WHEREAS, based upon the above, the Board finds that the site’s contamination and proximity to manufacturing uses create unnecessary hardship and practical difficulty in developing the site in conformance with use regulations; and

279-12-BZ

CEQR #13-BSA-034Q

WHEREAS, the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right mixed residential and community facility building; (2) an as-of-right community facility building; and (3) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the costs associated with remediation of the contaminated site; and

WHEREAS, in response, the applicant submitted detailed calculations and an itemized cost breakdown; and

WHEREAS, based upon its review of the record, the Board has determined 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, in accordance with ZR § 72-21(c), 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 low- to medium-density commercial and manufacturing uses; and

WHEREAS, the applicant states that there are non-conforming commercial and manufacturing uses on the two blocks directly north and directly south of the site along College Point Boulevard, and that the areas south and east of the site are almost exclusively commercial and manufacturing; and

WHEREAS, the applicant acknowledges that its two immediately adjacent lots are occupied by a mixed residential and commercial building on Block 4292, Lot 11 (which is directly north of the site) and a single-family residence on Block 4292, Lot 75, which is directly west of the site; however, the applicant states that the proposed bank office use is harmonious with a residential neighborhood, in that it has regular, daytime business hours and does not create any noise, traffic, or air quality impacts; further, the applicant has located the bank building on the southeastern-most corner of the lot and provided appropriate buffering measures, including a six-foot opaque fence with plantings; and

WHEREAS, the applicant also notes that the proposal has the support of a nearby homeowner's association; and

WHEREAS, the applicant represents and the Board agrees that the proposed bank (including its drive-through) will have significantly less traffic impacts on the neighborhood than the gasoline and automotive service station that previously occupied the

site; and

WHEREAS, finally, the applicant states that a manufacturing use has occupied the site for nearly 70 years and that the change to office use brings the site more into conformance with the site's R4/R5B designation and its nearby residential uses; and

WHEREAS, at hearing, the Board directed the applicant to clarify the need for the second story and the drive-through, and their impacts on the parking requirements of the bank; and

WHEREAS, in response, the applicant submitted a letter from the prospective tenant of the space, which stated that both the second floor and the drive-through are essential to its banking operations; according to the bank, the second floor would provide space for loan officers and customer service representatives to meet with patrons but would not increase the number of employees working at the branch; as such, the second floor has no impact on the parking requirements of the bank; in addition, the applicant provided a parking survey that demonstrated the proposed five spaces would, in light of nearby on-street parking, be adequate to accommodate the expected parking demand of the bank; and

WHEREAS, as for the drive-through, the applicant states that it is an amenity that would be particularly desirable for its local patrons, who tend to be automobile-oriented; and

WHEREAS, 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 practical difficulties and unnecessary hardships associated with the site result from the shape of the site, its contamination, and its proximity to manufacturing uses; and

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

WHEREAS, the applicant represents and the Board agrees that, per ZR § 72-21(e), the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; 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 as unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6 NYCRR; 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-034Q, dated September 19, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on

279-12-BZ

CEQR #13-BSA-034Q

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, 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 partially within an R4 zoning district and partially within an R5B zoning district, the construction of a two-story commercial building to be occupied as a bank (Use Group 6) with five accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10; *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 July 12, 2013"- (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: two stories; a maximum floor area of 5,082 sq. ft. (0.88 FAR); a maximum height of 26'-10"; a maximum lot coverage of 2,541 sq. ft.; and five accessory parking spaces;

THAT the building will be used as a bank;

THAT any change in use of the building will be subject to the Board's approval;

THAT landscaping and fencing will be in accordance with the BSA-approved plans;

THAT signage will comply with C1 district regulations;

THAT this approval is limited to the relief granted

A true copy of resolution adopted by the Board of Standards and Appeals, January 28, 2014.

Printed in Bulletin Nos. 4-5, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s);

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

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, January 28, 2014.

