

124-13-BZ
CEQR #13-BSA-132K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district

PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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 Brooklyn Borough Commissioner, dated March 29, 2013, acting on Department of Buildings Application No. 320724490, reads in pertinent part:

Proposed use is not permitted in an M1-1 zoning district as per ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling with seven units (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in the *City Record*, with continued hearings on February 4, 2014, April 8, 2014 and May 20, 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, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Grattan Street, between Porter Avenue and Knickerbocker Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 25 feet of frontage along Grattan Avenue, a depth of 100 feet, and approximately 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story temporary frame structure, which appears to have been used for storage but is currently vacant; and

WHEREAS, historic records, including the 1921 Belcher Hyde atlas, reflect that a three-story residential building constructed in the early 1900s occupied the site until its demolition in 1981; and

WHEREAS, the applicant notes that residential use became non-conforming at the site as of December 15, 1961, when the M1-1 designation took effect; and

WHEREAS, the applicant seeks a use variance to construct a four-story seven-unit

multiple dwelling with 4,838 sq. ft. of floor area (1.94 FAR) in accordance with the bulk regulations applicable in an R6 district (the nearest residential district, located approximately two blocks south of the site) where 2.2 FAR is the maximum permitted FAR; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site's history of residential use and adjacency to residential buildings on all sides, and across the street; (2) its small lot size of 2,500 sq. ft. and narrow lot width of 25 feet; and (3) its location on a narrow one-way street; and

WHEREAS, the applicant states that occupying the site with a conforming use would not be feasible due to the predominance of residential use, the small size, and constrained street access; and

WHEREAS, as to the history of and adjacency of residential use, the applicant notes that from the early 1900s until 1981, the site was occupied by a three-story residential building consistent with the row of such buildings adjacent to the site; and

WHEREAS, the applicant asserts that the former building was one of a series of residential apartment buildings located on the north side of Grattan Street; and

WHEREAS, the applicant asserts that since the 1981 demolition of the building, the site has either been vacant or occupied by the current vacant two-story frame structure, which was not constructed pursuant to DOB approvals as far as can be determined; and

WHEREAS, the applicant asserts that such adjacencies and absence of commercial or industrial presence in the immediate vicinity of this interior lot limits any foot or vehicular traffic to the site and renders retail use infeasible; and

WHEREAS, as to its size, the applicant asserts that almost all conforming manufacturing and commercial use on Grattan Street in the vicinity is on significantly larger lots in the range of 5,000 sq. ft. to 20,304 sq. ft.; and

WHEREAS, the applicant asserts that the floor plate is too small to accommodate loading of the amount of storage required for a conforming use; and

WHEREAS, the applicant states that development of the site with a conforming commercial or manufacturing use would be infeasible due to the small floor plates of 2,500 sq. ft.; and

WHEREAS, the applicant analyzed a complying one-story warehouse building which it concluded was not viable due to the small size and other locational constraints; and

WHEREAS, the applicant identified one similar site used for conforming use - 79 Grattan Street - with 2,500 sq. ft. of lot area, but noted that it is currently vacant, which reflects the absence of a market for smaller sites for conforming use; and

WHEREAS, the applicant asserts that its review of DOB records reflects that there are not any similarly-sized lots in the vicinity of the site that have been developed in the past decade; and

WHEREAS, the applicant notes that a one-story warehouse was constructed on the south side of Grattan

**124-13-BZ
CEQR #13-BSA-132K**

Street more recently, but that site has a width of 75 feet and a lot area of 7,500 sq. ft.; and

WHEREAS, the applicant states that the subject site is one of only four vacant lots with street frontage of less than 25 feet that is not in common ownership or used in conjunction with an adjacent lot; and

WHEREAS, the applicant also states that of the undeveloped and vacant sites on the surrounding portion of Grattan Street, the subject site is one of only two not owned in conjunction with an adjacent site; and

WHEREAS, as to the site's location, the applicant notes that it is an interior lot located on a narrow one-way street and is one of 12 vacant lots included in the study area, which is similarly situated; and

WHEREAS, the applicant notes that Grattan Street at this location is a narrow one-way street that would limit the nature of commercial vehicles that can use Grattan Street; and

WHEREAS, finally, the applicant represents that the site's narrowness and small lot size would result in a conforming manufacturing or commercial building with inefficient, narrow floor plates that would be inadequate space for providing a loading dock; further, the applicant states that based on the small lot size, a conforming development would provide a maximum floor plate of 2,500 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, the Board inquired about (1) whether the subject lot could be viewed separately from the adjacent lot at 97 Grattan Street, which is the subject of a separate use variance application pursuant to BSA Cal. No. 125-13-BZ; and (2) whether the subject site could be distinguished from other vacant lots; and

WHEREAS, the applicant responded that the ownership of the two lots is separate and submitted individual deeds for the two lots and stated that the 1921 Belcher Hyde atlas reflects that the lots were separate at that time and, thus, have been separate for at least 90 years; and

WHEREAS, however, the applicant notes that even if the two adjacent lots were developed as a single lot with a width of 50 feet and depth of 100 feet, the hardship on the lot would still exist; and

WHEREAS, as to the other vacant lots in the vicinity, the applicant performed an initial and then an expanded study of vacant lots within the vicinity and concluded that almost all of the other sites are either larger, have greater width and street frontage or are in common ownership with an adjacent site (or sites); and

WHEREAS, the applicant notes that out of 220 lots in the initial study area, 19 of them are vacant, which is approximately 8.5 percent; and

WHEREAS, the applicant states that of the vacant lots, the subject site is one of only four affected by all of the factors contributing to the unique conditions creating the hardship; and

WHEREAS, the applicant enlarged the study area to include a two-block radius around the site, which represents the manufacturing-zoned districts bordered by the railroad to the north and east of the site, water to the north of the site (English Kills), and the residential

districts to the south and west and includes 335 lots; and

WHEREAS, the applicant found that within the enlarged study area, there are 40 sites consisting of either individual lots or assemblages of adjacent lots under common ownership and are vacant or include vacant lots; and

WHEREAS, the applicant asserts that the subject site is one of five (1.5 percent of those within the study area) affected by all the factors contributing to the unique conditions creating hardship on the site including a lot width of 25 feet, an interior lot located on a one-way street, and a history of being used exclusively for residential purposes; and

WHEREAS, the applicant states that two vacant sites of similar size to 95 and 97 Grattan Street have both been vacant for many years – 110 Harrison Street since at least 1940 and 145 Thames since at least 1997; and

WHEREAS, based upon the above, the Board finds that there are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return on an as-of-right industrial building at the site and the proposal; and

WHEREAS, according to the study, a one-story building with approximately 5,000 sq. ft. of floor area occupied by a manufacturing use would yield a negative rate of return; the proposed residential building, on the other hand, would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use 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 subject side of Grattan Street has historically been and is currently primarily developed with residential buildings; and

WHEREAS, specifically, the adjacent use to the west and north (rear) are three-story residential buildings similar to what is proposed and the adjacent lot to the east is vacant and the subject of a use variance application pursuant to BSA Cal. No. 125-13-BZ decided on the same date; and

WHEREAS, as to adjacent uses, as noted above, there are residential uses on all adjacent lots and across the street; and

WHEREAS, the applicant notes that the building, although four stories, lines up with the height of the adjacent three-story with basement building and complies with all R6 zoning district bulk regulations; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least

**124-13-BZ
CEQR #13-BSA-132K**

1921 until 1981; thus, the applicant asserts that the site—and the subject stretch of Grattan Street—have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, in response to the Board's question about whether the proposal complies with light and air regulations, the applicant states that all proposed windows satisfy all light and air regulations including that they open either directly upon a street or upon a yard with a minimum dimension to the lot line of 30 feet; and

WHEREAS, specifically, the applicant notes that front apartments have windows opening directly upon Grattan Street and rear apartments open upon rear yards with distances of 46 feet to the rear lot line; and

WHEREAS, accordingly, the layout does not require light wells or courts to satisfy the light and air requirements; and

WHEREAS, accordingly, the applicant contends that the proposal is more consistent with the immediate character than a conforming use would be; 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 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 conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13-BSA-132K, dated April 25, 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

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

Printed in Bulletin No. 26, Vol. 99.

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

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, and grants a variance to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling with seven units (Use Group 2), contrary to ZR § 42-00; *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 June 23, 2014" – five (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 4,838 sq. ft. (1.94 FAR), a maximum lot coverage of 54 percent, seven dwelling units, a minimum rear yard depth of 30'-0", and a maximum building height of 40'-0", as indicated on the BSA-approved plans;

THAT the applicant must submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP's June 23, 2014 letter, and

THAT DEP must approve the Remedial Closure Report prior to obtaining a Certificate of Occupancy.

THAT substantial construction shall 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 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, June 24, 2014.

