

**CORRECTION**

**This resolution adopted on March 4, 2014, under Calendar No. 78-13-BZ and printed in Volume 99, Bulletin No. 10, is hereby corrected to read as follows:**

**78-13-BZ**

**CEQR #13-BSA-103K**

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit a new four-story, four-unit residential building (UG 2), contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4 zoning districts.

PREMISES AFFECTED – 876 Kent Avenue, located on the west side of Kent Avenue, approximately 91' north of Myrtle Avenue. Block 1897, Lot 56, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

**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, dated January 24, 2013, acting on Department of Buildings Application No. 310072818, reads, in pertinent part:

ZR 42-00 – Residential use is not permitted in manufacturing district; and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district, the construction of a four-story residential building (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in the *City Record*, with a continued hearing on September 24, 2013, and then to decision on March 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 3, Brooklyn, recommends disapproval of this application; and

WHEREAS, Councilperson Letitia James submitted a letter in support of this application; and

WHEREAS, the subject site is a rectangular lot located on the west side of Kent Avenue between Myrtle Avenue and Park Avenue, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district; and

WHEREAS, the site has 25 feet of frontage along Kent Avenue, a lot depth of 90 feet, and a lot area of 2,250 sq. ft.; and

WHEREAS, the applicant states that the site is now vacant, but was previously occupied by a three-story mixed residential and commercial building that was built in or around 1905 and demolished in 2003; and

WHEREAS, the applicant notes that a variance application was filed for the site in 2008, under BSA Cal. No. 238-08-BZ; such application was dismissed for lack of prosecution on February 23, 2010; however, on July 24, 2012, the Board granted a rehearing of the application based on the applicant’s revision of the proposal to comply with the R6 regulations with regard to floor area ratio, rear setback, and street wall location; and

WHEREAS, the applicant represents that the proposed residential building (Use Group 2), will have a floor area of 4,930.2 sq. ft. (2.2 FAR), a building height of 48’-11”, a rear yard depth of 38’-0”, and four dwelling units; and

WHEREAS, initially, the applicant proposed a building with a floor area of 5,680 sq. ft. (2.52 FAR) and a height of 53’-11”; and

WHEREAS, the applicant notes that Use Group 2 is not permitted in an M1-1 zoning district and that 65 percent of the site is within the M1-1 district and 35 percent of the site is within the R7A (C2-4) district; as such, ZR § 77-11, cannot be employed to extend the R7A (C2-4) use regulations to the M1-1 portion of the site; and

WHEREAS, accordingly, 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 lot’s small size, shallow depth, and narrow width; (2); the adjacency of residential uses; (3) the district boundary, which divides the lot; and (4) the inability to merge the site with adjacent lots; and

WHEREAS, the applicant asserts that the site is small (2,250 sq. ft. of lot area), shallow (90 feet), and narrow (25 feet); and

WHEREAS, as such, the applicant asserts that it would be impractical to develop the site with a modern manufacturing use, which requires significantly larger floorplates than the site would yield; and

WHEREAS, the applicant notes that the site is the smallest and shallowest lot within a 400-foot radius in the subject M1-1 zoning district with frontage along Kent Avenue; and

WHEREAS, the applicant states that the infeasibility of establishing a manufacturing use on an undersized lot is compounded by the difficulties in locating such use on a site surrounded by residential neighbors; and

**78-13-BZ**  
**CEQR #13-BSA-103K**

WHEREAS, in particular, the applicant states that the four adjacent buildings to the site and the building directly across the street contain residences; and

WHEREAS, the applicant states that the site is also uniquely burdened by being divided by the district boundary between an M1-1 zoning district (where the proposed use is not permitted as-of-right) and an R7A (C2-4) zoning district (where the proposed use is permitted as-of-right); and

WHEREAS, the applicant notes that while ZR § 77-11 typically affords relief for a split lot by allowing the use regulations of one district to extend to the other, such section would not allow for the proposed residential use, because less than 50 percent of the lot is within the R7A (C2-4) zoning district; and

WHEREAS, finally, the applicant asserts that the site is burdened by its inability to merge with another lot, which, when combined with its narrowness, shallowness, absence of an existing building, and split-lot condition, is unique in the subject M1-1 zoning district; and

WHEREAS, specifically, the applicant states that, of the 244 lots within the subject M1-1 zoning district, there are only 43 lots (including the site) that contain vacant or open parking uses; of these 43 lots, there are only 35 lots (including the site) with a lot width of 25 feet or less, 22 lots (including the site) with a lot depth of 90 feet or less, 19 lots (including the site) that have no potential to merge with the adjacent lots, and only two lots (including the site) that are split lots; and

WHEREAS, consequently, the applicant states that the site's unique physical conditions—its small lot size and shallow lot depth, the adjacency of residential uses, the split-lot condition, and the inability to merge—create an unnecessary hardship in developing the site in conformance with applicable regulations; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create 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, in addition to the proposed residential building with 2.2 FAR and the original proposal with 2.52 FAR, the applicant examined the economic feasibility of a two-story as-of-right manufacturing building with 2,250 sq. ft. of floor area; and

WHEREAS, the applicant concluded that the as-of-right scenario does not result in an acceptable rate of return; and

WHEREAS, based upon its review of the applicant's economic 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 medium density residential, commercial, and community facility uses, including a six-story mixed residential and commercial building and three-story mixed residential and commercial building to the south, a four-story residential building to the west, a three-story mixed residential and commercial building to the north, and a three-story residential building directly across the street; in addition, the applicant notes that there is a five-story school (PS 157) on the block, and a large park (Taaffe Playground) that occupies the majority of the block immediately to the west of the site; and

WHEREAS, the applicant states, as noted above, that the site has historically been occupied by residential uses and that, as such, the proposal would restore a viable use; and

WHEREAS, likewise, the applicant asserts that the area within a 400-foot radius of the site has limited industrial uses, and, therefore, a conforming use would be less appropriate than the proposal; and

WHEREAS, the Board agrees that the character of the area is predominantly residential, and it finds that the introduction of four dwelling units does not impact nearby conforming uses; and

WHEREAS, as to bulk, at hearing, the Board expressed concerns about the compatibility of the originally proposed building height, street wall location, and attic with the surrounding area; and

WHEREAS, in response, the applicant amended its proposal, lowering the building height from 53'-11" to 48'-11", moving the street wall forward 5'-0" to align with the adjacent building's street wall, and removing the attic entirely, thereby reducing the proposed floor area from 5,680 sq. ft. (2.52 FAR) to 4,930 sq. ft. (2.2 FAR); and

WHEREAS, the applicant notes that the proposed building, as modified, complies with the floor area, height and setback regulations for an R6 zoning district; as such, it provides an appropriate transition from the higher bulk of the R7A (C2-4) zoning district along Myrtle Avenue to the three-story building to the north of the site, which has a height of approximately 30'-0"; 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

**78-13-BZ**

**CEQR #13-BSA-103K**

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 small lot size, shallow lot depth, adjacency of residential uses, split-lot condition, and inability to merge; and

WHEREAS, finally, the Board finds that, as amended, 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 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. 13BSA103K, dated February 28, 2014; and

WHEREAS, the EAS documents show 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 New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP reviewed and accepted the December 2013 Remedial Action Plan and the October 2012 site-specific Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's air quality assessment and determined that no significant stationary, mobile, and industrial source air quality impacts to the proposed project are anticipated; and

WHEREAS, no other significant effects upon the

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

**Printed in Bulletin No. 10, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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, 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, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district, the construction of four-story residential building (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 "October 16, 2013"-Twelve (12) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a floor area of 4,930.2 sq. ft. (2.2 FAR), a building height of 48'-11", a rear yard depth of 38 feet, and four dwelling units, as illustrated on the BSA-approved plans;

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 DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT the approved plans will 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, March 4, 2014.

**The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.**

