

62-12-BZ

CEQR #12-BSA-094X

APPLICANT – Akerman Senterfitt LLP, for VBI Land Inc., owner.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of commercial building, contrary to use regulations (§22-00). R7-1 zoning district.

PREMISES AFFECTED – 614/618 Morris Avenue, northeastern corner of Morris Avenue and E 151th Street, Block 2411, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....	4
Negative:.....	0
Absent: Vice Chair Collins.....	1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner of the Department of Buildings (“DOB”), dated November 30, 2011, acting on DOB Application No. 220142441, reads, in pertinent part:

Proposed commercial use (retail Use Group 6) in an R7-1 zoning district is contrary to ZR 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-1 zoning district, the construction of a one-story mixed commercial and community facility building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in the *City Record*, with a continued hearing on March 25, 2013, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Bronx, recommends approval of the application, on condition that certain uses not be permitted within the building, including shelters, SROs, halfway houses, special needs or mental health facilities, domestic violence facilities, drug or alcohol rehabilitation centers, clubs, bars, cabarets, hotels or motels; and

WHEREAS, Bronx Borough President Ruben Diaz, Jr. and City Councilperson Maria del Carmen Arroyo provided testimony in support of the application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Morris Avenue and East 151st Street, within an R7-1 zoning district; and

WHEREAS, the site has 58.79 feet of frontage along Morris Avenue, 70.25 feet of frontage along East

151st Street, and 4,130 sq. ft. of lot area; and

WHEREAS, the applicant states that the site is vacant; and

WHEREAS, the applicant proposes to construct a two-story mixed commercial and community facility building with 8,260 sq. ft. of floor area (2.0 FAR); the first story would have 4,130 sq. ft. of floor area and be occupied by retail stores (Use Group 6); the second story would also have 4,130 sq. ft. of floor area and it would be occupied by a use within Use Group 4; and

WHEREAS, because Use Group 6 is not permitted within the subject R7-1 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: its small lot size, shallow lot depth, and vacancy; and

WHEREAS, the applicant states that the site’s small lot size (4,130 sq. ft. of lot area) and shallow lot depth (approximately 70 feet) make it unsuitable for conforming uses; and

WHEREAS, specifically, the applicant states it is financially infeasible to develop a site this small in this neighborhood for residential use without some commercial use, because residential uses of this scale require commercial use to offset the comparatively low residential rent, and

WHEREAS, in support of this statement, the applicant states that along Morris Avenue, small sites (with lot depths similar to the site and average lot areas of 2,000 sq. ft.) are occupied by approximately 100-year-old two- and three-story mixed residential and commercial buildings with commercial use at the ground floor; indeed, the applicant notes that the entire west side of Morris Avenue between East 149th Street and East 153rd Street is occupied by mixed residential and commercial buildings with ground floor retail use; and

WHEREAS, in addition, the applicant notes that residential developments without a commercial component in the neighborhood are much larger in scale than the site and can qualify for government assistance programs; and

WHEREAS, specifically, the applicant represents that nearby sites without a commercial component are significantly larger than the site, with average lot areas of 150,000 sq. ft.; such sites are developed as high-rise subsidized/low-income/affordable housing by the New York City Housing Authority, the New York State Division of Housing and Community Renewal, and the New York City Housing Development Corporation, which is not available to a site as small as the subject site; and

WHEREAS, the applicant also notes that the large sites were developed between 1961 and 1985; thus, new housing has not been developed in the vicinity for nearly 30 years; and

62-12-BZ

CEQR #12-BSA-094X

WHEREAS, the applicant states that the site's vacancy makes it unique within the surrounding community, and submitted an area study, which reflects that there are only two other vacant sites within 400 feet of the site, both of which are owned by the New York City Department of Housing Preservation and Development and used in conjunction with the nearby Governor Smith Playground; and

WHEREAS, the Board finds that the cited conditions create 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, in addition to the proposal, the applicant examined the economic feasibility of a four-story multiple dwelling with 14,207 sq. ft. of floor area (3.44 FAR) and 14 dwelling units; and

WHEREAS, the applicant concluded that the as-of-right scenario resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return, making it economically viable; and

WHEREAS, at hearing, the Board requested additional information regarding the types of housing that surround the site; and

WHEREAS, in response, the applicant provided charts detailing the two types of housing in the area: low-rise multiple dwellings with ground floor commercial; and higher-density (between six- and 25-stories) subsidized housing; and

WHEREAS, based on the information provided in these charts and on the applicant's economic analysis, the Board agrees that because of the 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 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, commercial and community facility uses; the subject block is predominantly occupied by a school, an athletic field, and, as noted above, the Governor Smith Playground; the playground is directly south of the site, four- and three-story mixed residential and commercial buildings are located, respectively, directly north and south (across East 151st Street) of the site, and across Morris Avenue is a six-

story multiple dwelling; and

WHEREAS, the applicant notes that the section of Morris Avenue where the site is located is a two-way, heavily-trafficked thoroughfare, with street parking on both sides, and retail uses at the ground floor for the full length of the subject block and the block directly south of East 151st Street; and

WHEREAS, accordingly, the proposed commercial use at the ground floor will be compatible with the surrounding neighborhood; and

WHEREAS, turning to bulk, the applicant represents that the following are the bulk parameters of the proposal: two stories; 8,260 sq. ft. of floor area (2.0 FAR); 100 percent lot coverage; and a maximum building height of 37'-6"; and

WHEREAS, the applicant notes that the proposed FAR of 2.0 is less than half of the maximum FAR permitted for a community facility building in the subject R7-1 district (4.8 FAR) and that the proposed building height is well-below the maximum permitted (60'-0"); and

WHEREAS, as for the lot coverage, the applicant notes that although it is non-complying—the maximum lot coverage for a community facility building is 70 percent with the first story being a permitted obstruction within lot coverage up to 23 feet for certain community facilities—the site's location on a corner mitigates the impact of such lot coverage; additionally, due to the site's shallow depth, full lot coverage is necessary in order to provide a building with marketable floorplates; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the proposal is consistent with the neighborhood in terms of use and bulk and will not negatively impact nearby conforming uses; and

WHEREAS, the Board also notes that Community Board 1 approved the application on condition that certain uses not be permitted at the site; and

WHEREAS, the Board observes that many of the uses opposed by Community Board 1 are community facility uses permitted as-of-right in the subject R7-1 zoning district; as such, the Board declines to impose a restriction that would prohibit uses that are permitted as-of-right; and

WHEREAS, as for the commercial uses that Community Board 1 identified as objectionable (clubs, bars, cabarets, hotels and motels), the Board agrees that they are not appropriate within this building and will not be permitted under this grant, and the Board notes that hotels and motels are neither physically possible, nor financially feasible within 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

62-12-BZ

CEQR #12-BSA-094X

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. 12-BSA-094X, dated March 5, 2012; 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 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 R7-1 zoning district, the construction of a one-story mixed commercial and community facility building, contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings filed with this application marked "Received April 2, 2014"–(7) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of two stories; a maximum of 8,260 sq. ft. of floor area (2.0 FAR) (4,130

sq. ft. of commercial floor area and 4,130 sq. ft. of community facility floor area); 100 percent lot coverage; and a maximum building height of 37'-6";

THAT signage will comply with C1 regulations;

THAT the following uses will not be permitted at the site: clubs, bars, cabarets, hotels or motels;

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, April 8, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, April 8, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

