

65-13-BZ

CEQR #13-BSA-097K

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Absent: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 24, 2013, acting on DOB Application No. 320704519, reads in pertinent part:

Residential building proposed in M1-1 (zoning district) contrary to 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an M1-1 zoning district and partially within an M1-2/R6A zoning district, the construction of a three-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in the *City Record*, with subsequent hearings on February 25, 2014, April 29, 2014, June 24, 2014, November 25, 2014, and then to decision on March 24, 2015; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the east side of Franklin Avenue, between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the site comprises Tax Lots 9 and 108; it has 37’-6” of frontage along Franklin Avenue, a depth of 123 feet, and approximately 4,612 sq. ft. of lot area; and

WHEREAS, the site is occupied by a vacant, three-story frame residential building, which dates from the late 19th Century; 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 states that the existing building at the site is structurally unsound and cannot be rehabilitated; in support of this statement, the applicant

submitted a report from a structural engineer, which details the deterioration of the building and contrasts such deterioration with nearby buildings of a similar vintage; and

WHEREAS, because the building cannot be retained, the applicant seeks a use variance to maintain the site’s historic residential use by constructing a new three-story multiple dwelling with 8,991 sq. ft. of floor area (1.95 FAR), five dwelling units, 65-percent lot coverage, a rear yard depth of 36’-0”, and a building height of 38’-0”; and

WHEREAS, initially, the applicant proposed a five-story multiple dwelling with 13,838 sq. ft. of floor area (3.0 FAR), nine dwelling units, 63-percent lot coverage, a rear yard depth of 30’-0”, and a building height of 57’-0”; and

WHEREAS, at the Board’s direction, through the hearing process, the proposal was reduced in height, number of stories, number of dwelling units, and 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 narrowness; and (3) the condition of the existing building at the site; and

WHEREAS, the applicant states that a residential building has occupied the site for more than 100 years, and that there are residential buildings directly adjacent to the site on all sides and across the street; and

WHEREAS, in addition, the applicant notes that a portion of the site is within an M1-2/R6A zoning district, where the proposed use is permitted as-of-right; and

WHEREAS, the applicant represents that the site is too narrow, too deep, and too small to accommodate a conforming use; and

WHEREAS, in particular, the applicant states that the site’s narrowness yields a conforming manufacturing or commercial building with small, inefficient, and narrow floor plates, which, when considered in conjunction with the adjacent residential uses, would not be attractive to a modern conforming use; and

WHEREAS, in support of its claim that the site is not feasible for modern manufacturing use, the applicant conducted a study of the 13 sites occupied by conforming uses on Franklin Avenue between Flushing Avenue and Myrtle Avenue; and

WHEREAS, based on the study, the applicant states that only two sites are narrower than the subject site and the other 11 are wider, including nine with a width of at least 62 feet; and

WHEREAS, thus, the applicant concludes that the subject site is significantly narrower than the vast majority of nearby sites occupied by conforming uses; and

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WHEREAS, as to the uniqueness of the existing residential building itself, the applicant provided an engineer's report that indicates that the building is structurally compromised in a manner that makes renovation infeasible; the report also notes that unlike nearby buildings of a similar vintage with similarly-antiquated construction techniques and materials, the subject building is detached; and

WHEREAS, consequently, the applicant contends that unlike attached (and even semi-detached) buildings from the same era, this building is free to move both laterally and vertically and it is subject to rotation on its foundation, resulting in a building that is uniquely unstable and unsuitable for rehabilitation; and

WHEREAS, to support the assertion that the building's detachedness is unique, the applicant provided a survey, which reflects that within 800 feet of the site, a total of 32 detached buildings were built around the time that the subject building was built, employed similar materials and methods; of these 32 detached buildings, the applicant states that only seven such buildings (less than one percent of the building stock within 800 feet of the site) remain; accordingly, the applicant concludes that existing building on the site contributes to the site's uniqueness and its unsuitability for conforming uses; and

WHEREAS, the Board agrees with the applicant that the site's historic residential use, adjacency to other residential uses, and narrow width, as well as the existing detached building at the site, are unique physical conditions, which, in the aggregate, 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 4,613 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 site'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

block is primarily developed with residential buildings; as noted above, a portion of the site is located within an M1-1/R6A zoning district, where the proposed use would be as-of-right; 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 also notes that the site has historically been occupied by a residential building; thus, the applicant asserts that the site, and the neighboring stretch of Franklin Avenue, have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, accordingly, the applicant contends that the proposal is more consistent with the neighborhood character than a conforming use would be; and

WHEREAS, as to bulk, the applicant states that the building complies in all respects with the R6A bulk regulations; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the compatibility of the originally-proposed building height and number of stories with the surrounding residential buildings; and (2) the proposed layouts of the dwelling units; and

WHEREAS, in response, the applicant: (1) reduced the height from 57'-0" to 38'-0" and the number of stories from five to three, and provided a streetscape, which demonstrates that the proposal is consistent with the height of the surrounding residential buildings; and (2) removed the interior partitions from the proposed plans, with the understanding that all interior layouts will be as reviewed and approved by DOB; 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 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-097K, dated February 15, 2013; and

WHEREAS, the EAS documents that the project as

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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 Landmarks Preservation Commission ("LPC") reviewed the project for potential archaeological impacts and requested that an archaeological documentary study (Phase 1A) be submitted for review and approval; and

WHEREAS, A Restrictive Declaration for an archaeological study was executed and filed for recording on March 2, 2015; 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, and grants a variance to permit, on a site partially within an M1-1 zoning district and partially within an M1-2/R6A zoning district, the construction of a three-story multiple dwelling (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 July 21, 2014" –(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 8,991 sq. ft. (1.95 FAR), five dwelling units, a minimum lot coverage of 65 percent, a minimum rear yard depth of 36'-0", and a maximum building height of 38'-0", as indicated on the

A true copy of resolution adopted by the Board of Standards and Appeals, March 24, 2015.

Printed in Bulletin Nos. 13-14, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

BSA-approved plans;

THAT the layouts of the dwelling units shall be as reviewed and approved by DOB;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by March 24, 2019;

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 a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until, pursuant to the Restrictive Declaration, the LPC has issued to DOB, as applicable, either a Notice of No Objection, Notice to Proceed, Notice of Satisfaction, or Final Notice of Satisfaction;

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, March 24, 2015.

