

185-13-BZ

CEQR #13-BSA-159K

APPLICANT – Eric Palatnik P.C., for 97 Franklin Avenue LLC, owner.

SUBJECT – Application June 20, 2013 – Variance (§72-21) to permit the development of a proposed three story, two-unit residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Franklin Avenue, Between Park and Myrtle Avenue, Block 899, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Hinkson, Commissioner Montanez and Commissioner Ottley-Brown.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 24, 2013, acting on DOB Application No. 320574295, reads in pertinent part:

 ZR42-00 Residential building proposed in [M1-1] [zoning district] [SIC] is not permitted per section...; 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 three-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in the *City Record*, with subsequent hearings August 19, 2014, October 7, 2014, December 9, 2014, and to decision on February 10, 2015; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; 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 has 26 feet of frontage along Franklin Avenue, a depth of 100 feet, and approximately 2,600 sq. ft. of lot area; and

WHEREAS, the site is vacant; and

WHEREAS, the applicant notes that residential use of the subject zoning district was disallowed as of December 15, 1961, when the M1-1 designation took effect; and

WHEREAS, the applicant seeks a use variance consistent with the character and historic residential use of surrounding area to permit the construction of a new three-story, two-family residential building with 4,933 sq. ft. of floor area (1.9 FAR), 64 percent lot coverage, a front yard of 6'-0", no side yards, a rear yard depth of 30'-0", and a building height of 40'-0"; 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 narrowness, small size, and vacancy; and (2) the adjacency of residential uses; and

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

WHEREAS, in particular, the applicant contends that the site's narrowness yields a conforming manufacturing or commercial building with small, inefficient, and narrow floor plates; and

WHEREAS, in addition, the applicant asserts that unlike sites with conforming uses in the surrounding area, the site lacks an existing building that was constructed to accommodate a conforming use; and

WHEREAS, the applicant also represents that there are residential buildings adjacent to the site on all sides and throughout the subject block and surrounding area; as such, the site is not desirable for modern manufacturing and commercial uses; and

WHEREAS, the Board agrees with the applicant that the fact that the site is vacant, its adjacency to other residential uses (the predominant use on the block), and narrow width and small size 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 as well as the rate of return on the proposed development; and

WHEREAS, according to the study, a one-story building with approximately 2,600 sq. ft. of floor area occupied by a manufacturing use would yield an unreasonable 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 conditions, 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, as noted above, that the subject block is primarily developed with residential buildings; and

WHEREAS, as to adjacent uses, as noted above, there are residential uses on all adjacent lots and throughout the subject block and surrounding area; and

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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 is consistent with the character of the district in which it is located and presented the Board with a land use study which provides examples of 16 residential buildings in the area surrounding the subject site of four stories or more; 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-159K, dated June, 10, 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

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 vacant site within an M1-1 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 November 11, 2014" – ten (10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum of 4,933 sq. ft. of floor area (1.9 FAR), two dwelling units, a maximum lot coverage of 64 percent, a minimum rear yard depth of 30'-0", a minimum front yard depth of 6'-0" and a maximum building height of 40'-0", as indicated on the BSA-approved plans;

THAT the layouts of the dwelling units will 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 will be signed off by DOB and all other relevant agencies by February 10, 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 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, February 10, 2015.

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

Printed in Bulletin Nos. 9-10, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

