

**263-12-BZ**

**CEQR #13-BSA-029X**

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

**COMMUNITY BOARD #10 & 13BX**

**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 Department of Buildings (“DOB”), dated May 21, 2013, acting on DOB Application No. 220206783, reads, in pertinent part:

Residential use is not permitted in an M1-1 zoning district, per ZR Section 42-00

Residential use does not have the required front yard along the zoning district boundary, as required by ZR Section 43-304; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, within the Special City Island District, the construction of a three-story residential building with age-restricted dwelling units (Use Group 2) with a front yard depth of 10’-0”, contrary to ZR §§ 42-00 and 43-304; and

WHEREAS, a public hearing was held on this application on June 11, 2013, after due notice by publication in the *City Record*, with continued hearings on October 29, 2013, and February 25, 2014. On May 20, 2014, the case was reopened and closed, and then to decision on June 17, 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, the Board notes that the application has been significantly altered through the hearing process; the original application included four stories, 132,271 sq. ft. of floor area (2.4 FAR), 65 percent lot coverage, 214 assisted-living dwelling units, 102 parking spaces, no front yards, a rear yard depth of 20’-0”, and a variance of Building Code Section BC G304 (which, among other things, requires that residential buildings be elevated above the design flood elevation) under BSA Cal. No. 264-12-A (the “Original Application”); the amended proposal includes three stories, 33,310 sq. ft. of floor area (0.6 FAR), 22-percent lot coverage, 45 age-

restricted (persons 55 years of age or older) dwelling units, 48 parking spaces, two front yards with depths of 10’-0”, a rear yard depth of 30’-0”, and construction in accordance with Building Code Section BC G304 (the “Amended Application”); and

WHEREAS, Community Board 10, Bronx, recommended disapproval of the Original Application and recommends disapproval of the Amended Application, citing concerns regarding: (1) the placement of housing on a site within a manufacturing district and a flood plain; (2) the amount of open space provided on the lot; and (3) the absence of “green” initiatives and flood-prevention measures at the building and site; and

WHEREAS, State Senator Jeffrey Klein and City Councilmember James Vacca recommended disapproval of the Original Application; and

WHEREAS, the City Island Chamber of Commerce recommends approval of the Amended Application; and

WHEREAS, certain members of the surrounding community submitted testimony in support of both Original and Amended Applications; and

WHEREAS, certain members of the surrounding community and the City Island Civic Associated (through counsel) submitted testimony in opposition to the Original Application (the “Opposition”); and

WHEREAS, the Opposition identified the following reasons for its objection to the Original Application: (1) the applicant lacks the legal capacity to develop or operate a residence for the elderly; (2) the proposed building is grossly incompatible with the surrounding community and puts building and neighborhood residents at risk; (3) the applicant fails to make the required findings to justify the variances it seeks under the Zoning Resolution and the Building Code; and (4) the application does not reflect the January 2012 Federal Emergency Management Agency (“FEMA”) Advisory Flood Insurance Rate Map changes, which increased the minimum elevation requirement of the building’s lowest floor to an adjusted height of 13’-6”; and

WHEREAS, a member of the City Island Civic Association states that the group does not oppose the Amended Application; however, it requests the following modifications: (1) the inclusion of a permeable paved surface; and (2) the inclusion of a “green” roof; and

WHEREAS, in response, the applicant states that it is unable to utilize a permeable paved surface because it must cap the soil prevent the risk of human exposure to certain contaminants that may be present in the soil; the applicant notes that the drainage for the site will be in accordance with the applicable provisions of the building code; and

WHEREAS, as to the green roof, the applicant states that 34 percent of the roof is dedicated as a “green” roof; and

WHEREAS, this application is brought on behalf of

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the Italian Hospital Society, a not-for-profit organization, which the applicant states was established in 1937 in conjunction with the founding of the Italian Hospital of New York on West 110th Street; and

WHEREAS, the subject site is an irregularly-shaped parcel located on the southeast corner of the intersection of City Island Avenue and Schofield Street, within an M1-1 zoning district, within the Special City Island District; and

WHEREAS, the site has approximately 191 feet of frontage along Schofield Street, approximately 237 feet of frontage along City Island Avenue, and 55,529 sq. ft. of lot area; and

WHEREAS, the site is currently used as a contractor's yard (Use Group 17); and

WHEREAS, as noted above, the applicant seeks to construct a three-story building with three stories 33,310 sq. ft. of floor area (0.6 FAR), 22 percent lot coverage, 45 age-restricted dwelling units, 48 parking spaces, two front yards with depths of 10'-0", and a rear yard depth of 30'-0"; the applicant notes that although the residence will be age-restricted, no assisted-living services will be provided; and

WHEREAS, because, per ZR § 42-00, Use Group 2 is not permitted within the subject M1-1 zoning district, the applicant requests a use variance; and

WHEREAS, in addition, because Schofield Street is a narrow street and its center line is a district boundary between the subject M1-1 zoning district and an R3A zoning district, a front yard depth of 20'-0" is required along the Schofield Street frontage, per ZR § 43-304; however, the applicant seeks to provide a front yard depth of 10'-0" along Schofield Street, and, as such, a variance of ZR § 43-304 is requested; 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 site's contaminated soil; (2) its high water table; and (3) its location within a flood plain; and

WHEREAS, the applicant states that the site suffers from high levels of contamination, including the presence of a layer of coal ash, slag and petroleum, volatile organic compounds, semi-volatile organic compounds, and metals; as such, the site will require significant remediation, including soil removal, disposal, and replacement of soils; further, the foundation will require special ventilation to allow trapped vapors to be safely exhausted and the underlying soil will be sealed with a concrete cap; and

WHEREAS, the applicant also notes that the site has been admitted into the New York State Department of Environmental Conservation Brownfields Cleanup Program, which will help to defray some but not all of the costs associated with redevelopment of the site; and

WHEREAS, the applicant states that ground water at the site fluctuates between five and ten feet below grade, which prevents the use of sub-grade spaces for administrative offices and common dining and recreational areas; and

WHEREAS, in addition, the applicant represents that the high water table will require dewatering and shoring of excavation walls during the construction of the foundation, at significant costs; and

WHEREAS, lastly, the applicant states that the site's location within a flood plain results in additional premium construction costs; and

WHEREAS, specifically, the applicant states that the site is within Zones AE and X of FEMA Advisory Flood Insurance Rate Map; as such, the lowest story of the building must be elevated above the design flood elevation, dry flood-proofing materials must be utilized at the cellar and first story, and utilities and equipment must be located at or above the design flood elevation or constructed so as to prevent water from entering or accumulating within the components during flooding; and

WHEREAS, as to the uniqueness of the site's physical conditions, the applicant states that while many sites on City Island are either contaminated, have a high water table, or are within a flood plain, no other site of remotely comparable size has all three conditions; accordingly, the applicant asserts that the site is unlike any other site on City Island; and

WHEREAS, thus, the applicant asserts that the site's unique combination of physical conditions—and their attendant premium construction costs—make a conforming development at the site impractical; and

WHEREAS, in particular, the applicant states that an as-of-right three-story office building with 34,800 sq. ft. of floor area (0.63 FAR) and 116 surface parking spaces does not produce sufficient returns to offset the above-noted premium construction costs; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and in the aggregate, create unnecessary hardship and practical difficulty in developing the site in accordance 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: (1) an as-of-right office building with (0.63 FAR); (2) an as-of-right office building with (1.0 FAR); (3) a lesser variance multiple dwelling with 0.5 FAR; (4) a lesser variance 0.5 FAR residential scenario with 21 single-family dwellings; and (5) the proposal; and

WHEREAS, the applicant concluded that only the proposal results in a positive rate of return, making it

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economically viable; 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 and compliance with applicable zoning requirements will provide a reasonable return, in accordance with ZR § 72-21(b); 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 surrounding neighborhood is characterized by a predominance of two-story residential buildings, except along City Island, which, to the north, includes local retail and office uses, and, to the south, P.S. 175, a portion of Ambrosini Field along City Island Avenue, and a yacht club; and

WHEREAS, as to immediately adjacent uses, the applicant states that there are residences or mixed residential and commercial buildings directly north and west of the site, an unmapped street (Centre Street) and Ambrosini Field directly south of the site, and a Verizon telephone exchange building directly east of the site; and

WHEREAS, thus, the applicant contends that the proposed residential use is entirely consistent with surrounding neighborhood; and

WHEREAS, turning to bulk, the applicant states that while the proposed 0.6 FAR is higher than the 0.5 FAR permitted in the nearby R3A district, it is well within the 1.0 FAR permitted for a conforming use at the site; and

WHEREAS, as noted above, through the hearing process and in response to concerns articulated by the community and by the Board, the applicant significantly scaled down the size and changed the nature of the project, from a four-story, assisted-living facility with 132,271 sq. ft. of floor area (2.4 FAR) and 214 dwelling units to a three-story, age-restricted apartment building with 33,310 sq. ft. of floor area (0.6 FAR) and 45 dwelling units; and

WHEREAS, additionally, the applicant notes that the proposed height complies with height regulations of the Special City Island District (ZR § 112-106) and the proposed density (45 dwelling units) is less than would be permitted if the site were subject to the density regulations of an R3A zoning district (47 dwelling units); and

WHEREAS, as to the requested front yard waiver, the applicant states that providing a front yard depth of 20'-0" along Schofield Street for the proposed residential

building is impractical and unnecessary, and would result in a loss of dwelling units that would make the proposal infeasible; and

WHEREAS, the applicant asserts that the neighborhood context, parking and open space requirements of an R3A zoning district, and programmatic needs of the Italian Hospital Society in creating an appropriate age-restricted living environment with easily accessible parking and outdoor recreation space must be considered in determining the appropriate depth of the front yard along Schofield Street; and

WHEREAS, further, the applicant states that providing a front yard depth of 20'-0" along Schofield Street does not further the purposes of the ZR § 43-304, because the section was clearly intended to provide an added buffer between residential uses and manufacturing uses and the proposed building is residential within the manufacturing district; thus, no buffer is necessary and a front yard depth of 10'-0" (the requirement in the adjacent R3A zoning district) is appropriate; and

WHEREAS, thus, the applicant states that the proposed bulk is consistent with the built character of the surrounding neighborhood; and

WHEREAS, the Board agrees that the character of the area is residential, and finds that, pursuant to ZR § 72-21(c), 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 also 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 soil contamination, high water table, location within a flood plain, as well as the limited economic potential of conforming uses on the lot; 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. 13BSA029X, dated August 31, 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

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and Pedestrians; Air Quality; Noise; and Public Health;  
and

WHEREAS, the site has been submitted for entry into the New York State Brownfield Cleanup Program ("BCP") administered by the New York State Department of Environmental Conservation ("DEC"); and

WHEREAS, based on the level of site contamination and the applicant's proposal to construct subject to BCP approval, the Department of Environmental Protection ("DEP") recommends that an E designation for hazardous materials be placed on the site as part of the approval; 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; 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, on a site within an M1-1 zoning district, within the Special City Island District, the construction of a three-story residential building with age-restricted dwelling units (Use Group 2) with a front yard depth of 10'-0", contrary to ZR §§ 42-00 and 43-304, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 13, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: three stories, a maximum floor area of 33,310 sq. ft. (0.6 FAR), a maximum lot coverage of 22 percent, a maximum of 45 age-restricted dwelling units, 48 parking spaces, two front yards with minimum depths of 10'-0", and a minimum rear yard depth of 30'-0";

THAT the occupancy of the building will be limited to persons 55 years of age or older;

THAT landscaping will be in accordance with the

**A true copy of resolution adopted by the Board of Standards and Appeals, June 17, 2014.**

**Printed in Bulletin No. 25, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

BSA-approved drawings;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT, an E designation (E-347) is placed on the subject property to ensure proper hazardous materials remediation;

THAT, prior to the issuance by DOB of permits that involve soil disturbance, the applicant shall obtain from OER a Notice to Proceed, which shall be based on DEC's letter of acceptance into the Brownfield Cleanup Program;

THAT, prior to the issuance by DOB of a certificate of occupancy, the applicant shall obtain from OER a Notice of Satisfaction, which shall be based on DEC's letter of satisfaction regarding completion of the Brownfield Cleanup Program;

THAT, should the applicant not obtain an approval from DEC for completion of the BCP, the applicant must obtain approval from OER for a hazardous materials remediation plan and construction health related safety plan prior to the issuance of a Certificate of Occupancy;

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,  
June 17, 2014.

