

54-12-BZ

CEQR #12-BSA-087Q

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

COMMUNITY BOARD #6Q

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 February 8, 2012, acting on DOB Application No. 420316535, reads in pertinent part:

Proposed community facility with dwelling above located in an R5 zoning district does not meet the following bulk regulations:

1. Exceeds the minimum allowed lot coverage for the residential portion of the building, per ZR 23-141;
2. Is not allowed to be built on an existing small lot that does not meet the minimum lot width, per ZR 23-32 and 23-33;
3. Does not meet the required front yard, per ZR 23-45 and 24-34;
4. Does not meet the required side yards, per ZR 23-46 and 24-35;
5. Does not meet the required side setback, per ZR 24-55; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located within an R5 zoning district, the construction of a two-story mixed residential (Use Group 2) and community facility building (Use Group 4) that does not comply with the bulk regulations for lot coverage, minimum lot width, front yard, side yards, and side setback, contrary to ZR §§ 23-141, 23-32, 23-33, 23-45, 23-46, 24-34, 24-35, and 24-55; and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in the *City Record*, with continued hearings on September 10, 2013, October 22, 2013, March 11, 2014, and May 20, 2014, and then to decision on June 17, 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 6, Queens, recommended approval of the original version of this application, provided that (1) the community facility operates within standard business hours and (2) the facility does not offer open MRI, PET scan, or CT scan procedures; and

WHEREAS, the subject site spans the east side of 102nd Street between 65th Road and 66th Avenue, within an R5 zoning district, within a predominantly built-up area; and

WHEREAS, the site has approximately 130 feet of frontage along 102nd Street, approximately 22 feet of frontage along 65th Road, approximately 18 feet of frontage along 66th Avenue, and 2,573 sq. ft. of lot area; and

WHEREAS, the applicant submitted excerpts of Sanborn maps from various years between 1914 and 1994, which indicate that the site has been a lot of record in its current size and configuration for at least 100 years; and

WHEREAS, the site is occupied by two buildings: (1) a two-story, semi-detached, single-family home (Use Group 2) with 1,446 sq. ft. of floor area (0.56 FAR) on the northern portion of the site; and (2) a one-story, detached medical office (Use Group 4) with 610 sq. ft. of floor area (0.24 FAR) on the southern portion of the lot; thus, the site has a total existing floor area of 2,056 sq. ft. (0.80 FAR); and

WHEREAS, the applicant notes that both the home and the medical office were completed on or about July 10, 1958 and that the owner of the home constructed the medical office for his private practice; and

WHEREAS, the applicant states that the home is occupied but the medical office is vacant and has been since the current owner took possession of the site; and

WHEREAS, the applicant originally proposed to demolish the medical office building and construct a four-story mixed residential (Use Group 2) and ambulatory diagnostic or treatment health care facility (Use Group 4) building with 3,731 sq. ft. of floor area (1.45 FAR) (2,799 sq. ft. of residential floor area and 932 sq. ft. of community facility floor area) and wall and building heights of 35’-0”; the original proposal included community facility on the first story and one dwelling on each of the second through fourth stories; this proposal required waivers for lot coverage, minimum lot width, front, rear, and side yards, and side setback; and

WHEREAS, through the hearing process, the proposal was scaled down significantly; the applicant now proposes to demolish the medical office building and construct a two-story mixed residential (Use Group 2) and ambulatory diagnostic or treatment health care facility (Use Group 4) building with 1,866 sq. ft. of floor area (0.73 FAR) (933 sq. ft. of residential floor area and 933 sq. ft. of community facility floor area), a wall height

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of 22'-0" and a building height of 28'-0", and complying rear yard depth of 27'-5"; the revised proposal has a community facility on the first story and one dwelling unit on the second story and requires waivers for lot coverage, minimum lot width, front and side yards, and side setback; the revised proposal will increase the total floor area on the site from 2,056 sq. ft. (0.80 FAR) to 3,321 sq. ft. (1.28 FAR), which is well within the maximum permitted floor area for the site (5,177 sq. ft. (2.0 FAR)); and

WHEREAS, as to the waivers, the applicant states that the proposal includes 64 percent lot coverage (a maximum lot coverage of 60 percent is permitted for a community facility building), one front yard with a depth of 15'-0" (the requirement is two front yards with minimum depths of 10'-0" and 18'-0"), no side yard (the requirement is one side yard with a minimum width of 8'-0"), and no side setback (a side setback with a minimum width of 8'-0" is required for a community facility building); and

WHEREAS, in addition, the applicant states that because the existing lot width is 17'-6" and the minimum lot width in the subject R5 district is 18'-0", any increase in the existing floor area on the lot requires a minimum lot width waiver; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the zoning lot, which, in accordance with ZR § 72-21(a), create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the history of community facility use at the site and obsolescence of the building at the site for such use; (2) the site's three frontages; and (3) the relative underdevelopment of the site and inability to enlarge; and

WHEREAS, the applicant states that, unlike nearby sites, the subject site is occupied by a small, functionally-obsolete community building that creates practical difficulties in redeveloping the site; and

WHEREAS, in particular, the applicant states that the building, which is more than 55 years old, has only 610 sq. ft. of rentable floor area and no cellar or basement; as such, the space is too small to meet even the minimum requirements of a modern medical office, which include a waiting room, a reception area, an examination room, record storage areas, a restroom, and some private office space for medical professionals; and

WHEREAS, the applicant represents that the space has no market potential in its current condition and configuration and the owner has made numerous attempts to secure a tenant over the years, without success; and

WHEREAS, the applicant also asserts that the site's three frontages along 102nd Street, 65th Road and 66th Avenue (which is a historic condition) create a unique burden that makes as-of-right development of the site

infeasible; and

WHEREAS, the applicant states that because the site has three frontages, it must provide three front yards with minimum depths of 10'-0" along the portion of its perimeter fronting on a street (a linear distance of approximately 170'-0"); as such, the front yard requirements alone reduce the developable area of the site by approximately 1,700 sq. ft.; the rear and side yards and lot coverage requirements further reduce the portion of the site where development may occur as-of-right; and

WHEREAS, finally, the applicant states that the site has history of underdevelopment with little potential to develop as-of-right; and

WHEREAS, as noted above, the applicant states that the site's 2,056 sq. ft. of floor area (0.80 FAR) was developed in 1958 represents less than half of the maximum permitted FAR for the site (1.65 FAR); and

WHEREAS, the applicant states that despite its underdevelopment, its location on a corner and the applicable yard and lot coverage requirements make further development—or even complete redevelopment—impractical; and

WHEREAS, specifically, the applicant states that an as-of-right community facility building on the site would have only 203 sq. ft. of floor area, which, is not enough to accommodate even the smallest community facility use (the applicant notes that typical medical offices range from 1,000 sq. ft. to 1,200 sq. ft., including storage space); thus, an as-of-right office at the site would be one-fifth the size of a typical office; and

WHEREAS, the applicant also analyzed the technical feasibility of enlarging the site's single-family home, in order to realize a greater portion of the site's development potential (the home has 1,446 sq. ft. of floor area (0.56 FAR); a maximum of 4,246 sq. ft. (1.65 FAR) is permitted because the site is within a predominantly built-up area); however, the applicant submitted an analysis, which reflects that yard requirements prevent *any* enlargement of the existing home; in contrast, other homes on the subject block with similar FARs on similarly-sized sites but without three frontages are able to enlarge both vertically and horizontally by an average of 1,310 sq. ft.; and

WHEREAS, thus, the applicant states that the site is significantly disadvantaged by the site's obsolescent building, its three frontages, and its historic underdevelopment; and

WHEREAS, based upon the above, the Board finds that, in accordance with ZR § 72-21(a), the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in compliance with the Zoning Resolution will bring a reasonable return; and

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WHEREAS, the applicant assessed the financial feasibility of four scenarios: (1) the status quo; (2) the construction of a new as-of-right community facility building; (2) a lesser scenario involving the enlargement of the existing community facility building with front and side yard waivers only; and (4) the proposal; and

WHEREAS, thus, the applicant concludes that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board questioned the value of the site in comparison to nearby sites; and

WHEREAS, in response, the applicant amended its analysis and reduced the site value; and

WHEREAS, based upon its review of the applicant's submissions, the Board concludes that because of the site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the variance, if granted, 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; and

WHEREAS, the applicant represents that the neighborhood is predominantly occupied by residential and community facility uses, with diverse mix of rowhouses, high-rise multiple dwellings, medical facilities, and schools; and

WHEREAS, the applicant states that the site has been occupied by a medical facility for more than 55 years, that Use Group 4 is permitted as-of-right in the subject zoning district; and

WHEREAS, as to adjacent properties, the applicant states that two-story residential building are located north, east, and west of the site; south of the site across the 66th Avenue is the ten-story Forest Hills Hospital and southwest of the site, where 66th Avenue terminates at 102nd Street, and there is a seven-story multiple dwelling; and

WHEREAS, the applicant states that the proposed enlargement will have no discernable impact on any adjacent use; and

WHEREAS, the applicant states that although there are taller buildings in the vicinity of the site, there is a strong two-story context directly north, east and west of the site and the proposal is in keeping with this context; and

WHEREAS, the applicant also states that the proposed yard waivers actually allow the building to have its minimum impact on adjacent uses, by allowing the building to be constructed at the southwesternmost portion of the site (the exclusively residential uses on the subject block are north and east of the proposed

building); and

WHEREAS, as to lot minimum lot width, the applicant states that the proposed width of 17'-6" is deficient by only 0'-6" and is an existing condition, which does not impact adjacent uses; and

WHEREAS, as to lot coverage, the applicant states that the proposed 64-percent lot coverage is both modest (the maximum permitted is 60 percent) and necessary to allow construction of a building with viable residential and community facility floorplates; and

WHEREAS, finally, as with lot coverage and yards, the side setback waiver is necessary to construct a building that is both marketable and responsive to the low-rise context of the block; 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 applicant asserts and the Board agrees that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the site's unique physical conditions; and

WHEREAS, the applicant states that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board agrees that the proposal is the minimum variance necessary, per ZR § 72-21(e), and it notes that the proposal has been reduced by two stories and 1,865 sq. ft. of floor area since its original iteration; and

WHEREAS, thus, 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 CEQR No. 12-BSA-087Q, dated March 7, 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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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 prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site located within an R5 zoning district, the construction of a two-story mixed residential (Use Group 2) and community facility building (Use Group 4) that does not comply with the bulk regulations for lot coverage, minimum lot width, front yard, side yards, and side setback, contrary to ZR §§ 23-141, 23-32, 23-33, 23-45, 23-46, 24-34, 24-35, and 24-55; *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 June 11, 2014" – five (5) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: two stories; 1,866 sq. ft. of floor area (0.73 FAR) (933 sq. ft. of residential floor area and 933 sq. ft. of community facility floor area), a maximum wall height of 22'-0"; a maximum building height of 28'-0"; and a minimum rear yard depth of 27'-5"; as indicated on the BSA-approved plans;

THAT the zoning lot will have a maximum floor area of 3,321 sq. ft. (1.28 FAR);

THAT substantial construction shall be completed pursuant to 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 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, June 17, 2014.

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

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

