

173-08-BZ

CEQR #09-BSA-001Q

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§72-21) to allow a 12-story hotel building containing 99 hotel rooms; contrary to floor area regulations (§117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

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 Queens Borough Superintendent, dated May 28, 2008, acting on Department of Buildings Application No. 410041431, reads in pertinent part:

“Proposed building for transient hotel (UG 5) located in M1-5/R7-3 of area “C” by exceeding maximum permitted FAR of 5.00 is contrary to section 117-522 ZR;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site in an M1-5/R7-3 zoning district located within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C, the construction of a ten-story and cellar hotel which does not comply with floor area regulations, contrary to ZR § 117-522; and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in *The City Record*, with continued hearings on March 17, 2009, April 21, 2009, June 9, 2009 and July 21, 2009, and then to decision on August 25, 2009; and

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

WHEREAS, Community Board 2, Queens recommended disapproval of the applicant’s original proposal; and

WHEREAS, the subject site is located on the northeast corner of the intersection at Crescent Street and 43rd Avenue, in an M1-5/R7-3 zoning district located within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C; and

WHEREAS, the site is an irregularly shaped corner lot with approximately 81 feet of frontage on Crescent Street and 25 feet of frontage on 43rd Avenue, and a total

lot area of 4,414 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a ten-story, 88-unit hotel (UG 5) with a total floor area of approximately 27,563 sq. ft. (6.25 FAR); the maximum permitted floor area is 22,070 sq. ft. (5.0 FAR); and

WHEREAS, the applicant initially proposed a twelve-story, 99-unit hotel with a floor area of 35,109 sq. ft. (7.95); and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site’s small size and irregular shape; (2) the site’s location adjacent to an overpass leading to the Queensboro Bridge; and (3) the site’s proximity to subsurface Metropolitan Transportation Authority (“MTA”) construction; and

WHEREAS, as to the site’s size and irregular shape, the applicant states that the subject site has a lot area of only 4,414 sq. ft., and is one of only seven irregular corner lots in all of Area C of the Queens Plaza Subdistrict; and

WHEREAS, the applicant states that the small size and irregular shape of the lot results in an inefficient design for residential use; and

WHEREAS, the applicant states that residential use is further restricted by the site’s proximity to an overpass leading to the Queensboro Bridge; and

WHEREAS, specifically, the applicant states that the subject site is located immediately adjacent to the entrance ramp to the Queensboro Bridge which is approximately two stories in height and is heavily-traveled at all hours; and

WHEREAS, the applicant represents that the high volume of traffic and corresponding noise resulting from the site’s proximity to the entrance ramp inhibits the residential use of the property; thus making a hotel the only viable use for the site; and

WHEREAS, the applicant states that the small size and irregular shape of the lot also results in an inefficient design for hotel use, as it limits the number of possible rooms per floor in a hotel development; and

WHEREAS, specifically, the irregular configuration of the lot results in a plan with 11 guest rooms on a typical floor and a maximum of 56 guest rooms in an eight-story complying hotel; and

WHEREAS, the applicant submitted plans indicating that a rectangular lot with the same lot area could accommodate a complying building with floor plates that could accommodate 14 guest rooms on a typical floor and a total of 84 guest rooms in an eight-story hotel; and

WHEREAS, therefore, the applicant concludes that the irregularity of the site directly results in the inability

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to efficiently accommodate rooms and increases the amount of square footage that is occupied by corridors, circulation space, and the building core; and

WHEREAS, as to the site's proximity to subsurface MTA construction, the Board disagrees with the applicant's assertion that the presence of subsurface MTA construction is a unique physical condition; and

WHEREAS, the Board observes that the subsurface MTA construction is a condition that affects a significant number of properties in the surrounding area; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions cited by the applicant, namely the small size and irregular shape of the lot and the site's location adjacent to an overpass leading to the Queensboro Bridge, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a 4.98 FAR complying residential development; (2) a 56-room complying hotel development; (3) a hypothetical 84-room hotel on a rectangular lot with the same lot area as the subject site; (4) the original proposal for a 99-room hotel; (5) an 88-room hotel with significant amenity space; and (6) the proposed development; and

WHEREAS, the feasibility study concluded that both a complying residential development and a complying hotel development would generate a negative rate of return; and

WHEREAS, the feasibility study further concluded that the hypothetical 84-room hotel, the 99-room hotel, the 88-room hotel with significant amenity space, and the proposed development would realize a reasonable rate of return; and

WHEREAS, the Board notes that while several of the studied proposals provided a reasonable rate of return, the proposed hotel development represents the minimum variance necessary to afford the owner relief; and

WHEREAS, as to the hypothetical site, the Board notes that the feasibility study supports the applicant's contention that the size and shape of the subject site constrain it from developing a complying hotel that provides a reasonable rate of return; and

WHEREAS, the Board further notes that although it does not consider the site's proximity to subsurface MTA construction to be a unique physical condition, it acknowledges that the costs associated with developing the site to ensure that there are no adverse effects on the subsurface MTA construction are legitimate construction costs which factor into the analysis of the applicant's ability to realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning 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; and

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the only waiver requested is for floor area, as the proposal complies with all other bulk regulations; and

WHEREAS, the applicant represents that the proposed bulk and use are consistent with the surrounding area, which is characterized by a mix of uses and an abundance of multi-story buildings; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there is an eight-story hotel located one block north of the subject site, on the corner of Crescent Street and 42nd Road, and a 16-story office building located two blocks west of the site, on the corner of 24th Street and 44th Road; and

WHEREAS, the applicant notes that the subject site is located on the border of an M1-6/R10 zoning district within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area A-2, where the proposed development would be permitted as-of-right due to the permitted FAR of 12.0; and

WHEREAS, the Board notes that the applicant revised its proposal to significantly reduce the requested FAR for the proposed hotel, thus making it more compatible with the FARs of buildings in the surrounding area; and

WHEREAS, based upon the above, 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 the hardship herein was not created by the owner or a predecessor in title, but is the result of the unique site conditions; and

WHEREAS, the applicant initially proposed a 99-unit hotel with a floor area of 35,109 sq. ft. (7.95 FAR), a significant amount of which was reserved for hotel amenities, such as a bar lounge and retail space; and

WHEREAS, at hearing, the Board questioned the applicant's need for the number of rooms and the amenity space provided in the plans; and

WHEREAS, in response, the applicant revised its plans by removing the requested amenities and providing an 88-unit hotel with a floor area of approximately 27,563 sq. ft. (6.25 FAR); and

WHEREAS, the applicant states that the requested FAR is necessary to provide a sufficient number of hotel rooms to make the development financially

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feasible; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, 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; 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. 09-BSA-001Q, dated October 6, 2008; 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 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 in an M1-5/R7-3 zoning district within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C, the proposed construction of a ten-story and cellar hotel (UG 5) which does not comply with floor area regulations, contrary to ZR § 117-522; *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 8, 2009"-(8) sheets; and *on further condition*:

THAT the building parameters shall be: a maximum floor area of approximately 27,563 sq. ft.; and an FAR of

6.25;

THAT the elevator bulkhead shall comply with all applicable regulations of the Zoning Resolution and Administrative Code;

THAT construction shall 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) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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, August 25, 2009.

A true copy of resolution adopted by the Board of Standards and Appeals, August 25, 2009.
Printed in Bulletin No. 34, Vol. 94.

Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.