

**186-14-BZ**

**CEQR #15-BSA-043K**

APPLICANT – Law Office of Lyra J. Altman, for Bond Street Owner, LLC, owners.

SUBJECT – Application August 15, 2014 – Variance (§72-21) to permit the construction of a new hotel building with ground floor retail contrary to allowable commercial floor area (ZR 33-122) located within C6-1/R6B District in the Downtown Brooklyn Special District.

PREMISES AFFECTED – 51-63 Bond Street, aka 252-270 Schermerhorn Street, southeast corner of Bond Street and Schermerhorn Street, Block 172, Lot(s) 5, 7, 10, 13, 14, 15, 109, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 7, 2014, acting on DOB Application No. 320914221, reads in pertinent part:

Commercial Floor Area in proposed building exceeds the maximum permitted 6.0, contrary to ZR 33-122; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C6-1 zoning district, and partially within an R6B zoning district, within the Special Downtown Brooklyn District, the construction of a 13-story hotel (Use Group 5) that does not comply with the zoning requirements for floor area ratio (“FAR”), contrary to ZR § 33-122; and

WHEREAS, a public hearing was held on this application on February 10, 2015, after due notice by publication in the *City Record*, with continued hearings on March 24, 2015 and April 28, 2015, and then to decision on May 19, 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, Community Board 2, Brooklyn, recommends disapproval of this application, citing concerns regarding the extent of the floor area waiver, the number of hotel rooms, and the impact of the proposal on vehicular traffic; and

WHEREAS, certain members of the surrounding community testified in opposition to the application (the “Opposition”), citing the following concerns: (1) an increase in pedestrian and vehicular traffic, refuse, and noise; (2) the proposed hotel entrance on Bond Street; (3) the proposed outdoor space on the south side of the building adjacent to the residential buildings; (4) the

additional floor area for the hotel and number of hotel rooms, which are inconsistent with the low-rise, residential character of many surrounding streets; (5) the uniqueness of the subway tunnel below the site, which is common in the neighborhood; and (6) the depth of excavation adjacent to the residential buildings south of the site; and

WHEREAS, certain members of the surrounding community, including the Brooklyn Academy of Music, the Brooklyn Ballet, Urban Glass, and the Downtown Brooklyn Partnership, testified in support of the application; and

WHEREAS, the subject site is an irregular lot located on the southeast corner of the intersection of Bond Street and Schermerhorn Street, partially within a C6-1 zoning district, and partially within an R6B zoning district, within the Special Downtown Brooklyn District; the irregular shape of the site is due to its varying depths, which step down at right angles (corresponding in some cases to historic tax lot lines) and range from 51 feet (measured from the northeast corner of the site) to 105 feet (measured from the northwest corner of the site); and

WHEREAS, the site comprises Tax Lots 5, 7, 10, 13, 14, 15, and 109, has 105 feet of frontage along Bond Street and 210 feet of frontage along Schermerhorn Street, and has 17,960 sq. ft. of lot area; and

WHEREAS, the applicant notes that, per ZR § 77-11, the use and bulk regulations applicable in the C6-1 portion of the site are applicable within the R6B portion of the site, because: (1) the site existed as a zoning lot prior to the amendment that created the split-lot condition; and (2) the R6B portion of the site is both less than 50 percent of area of the entire site and less than 25 feet from the district boundary; thus, Use Group 5 is permitted as-of-right throughout the site; and

WHEREAS, the site is vacant; the applicant represents that it has been used for parking since at least 1968; and

WHEREAS, the applicant proposes to construct a 13-story hotel (Use Group 5) with 154,947 sq. ft. of floor area (8.63 FAR), a building height of 186’-1¾” (excluding bulkheads and parapets), 287 hotel rooms, a large event space (“Ballroom”), a restaurant and bar, and an accessory fitness center; and

WHEREAS, in order to construct the building as proposed, the applicant seeks a waiver of ZR § 33-122, which limits commercial floor area at the site to 6.0 FAR; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the presence of an MTA subway tunnel and access mezzanine directly below approximately 70 percent of the site is a unique physical conditions that creates practical difficulties and unnecessary hardships in developing the site in compliance with the floor area regulations; and

WHEREAS, the applicant states that an MTA subway tunnel and an access mezzanine (“MTA

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Encumbrances”) are located directly below 70 percent of the site; and

WHEREAS, the applicant submitted a diagram illustrating that the MTA Encumbrances occupy a trapezoidal portion of the site, with the trapezoid’s parallels running parallel to Bond Street, forming right angles with the northern lot line (along Schermerhorn Street) and the trapezoid’s diagonal beginning approximately 66 feet south of the intersection of Bond and Schermerhorn and terminating approximately 50 feet south of the northeast corner of the site; thus, the MTA Encumbrances occupy the entire regular (rectangular) portion of the irregularly-shaped site; and

WHEREAS, in addition, the applicant states that the MTA Encumbrances occur at various depths; at the northwest corner of the site, the top of the mezzanine is seven feet below grade; the tunnel occupies the balance of the site and its top is located 14 feet below grade (except for a small triangular portion along Schermerhorn Street, where the top of the tunnel is 16 feet below grade); and

WHEREAS, the applicant asserts that the extent and nature of the MTA Encumbrances is unique; in support of this assertion, the applicant submitted a land use study of nine development sites (along Schermerhorn Street between Jay Street-Smith Street and Flatbush Avenue) that encumbered by MTA tunnels and related facilities; and

WHEREAS, the study reflects that none of the nine has the site’s substantial encumbrance at such shallow depths; and

WHEREAS, the applicant states that the MTA Encumbrances create practical difficulties and unnecessary hardship, because a traditional foundation system with a cellar and sub-cellars for the hotel cannot be constructed; as such, back-of-house hotel functions that would typically occupy the below-grade levels (hotel administration space, kitchen, and fitness center) must be provided above grade, thereby reducing the amount of floor area available for hotel rooms; and

WHEREAS, in addition, preserving and protecting the MTA property results in premium construction costs; and

WHEREAS, the applicant states that, according to its engineering consultants, the diagonal location and depth of the subway tunnel and mezzanine significantly increases the complexity of the subgrade construction, including the type of foundation system, how the loads are distributed, the depth of excavation, the volume of excavation, the pile type, and the quantity of piles, concrete and reinforcing bar; due to the diagonal orientation of the tunnel, major foundation structure can only be placed on one side of the tunnel and separate systems are required to transfer gravity loads and deliver lateral loads to the portion of the foundation adjacent to

the tunnel; and

WHEREAS, the applicant’s consultant opines that the proposed foundation system is unique to the site and not found in any other building in the city; and

WHEREAS, in addition, the applicant states that the MTA: (1) prohibits driven piles in the vicinity of the tunnel; instead, drilled piles (which are more expensive) must be utilized; (2) requires extensive monitoring for noise and vibration during construction; and (3) requires elastomeric pads beneath all vertical load carrying element that rest on the tunnel (to isolate the lateral loads from the tunnel structure); and

WHEREAS, the applicant estimates its premium construction costs related to the MTA Encumbrances to be \$20,522,000; and

WHEREAS, to illustrate the effect of the site’s unique hardship, the applicant studied the feasibility of: (1) a complying development at the site with the MTA Encumbrances; and (2) a complying development at the site without the MTA Encumbrances; and

WHEREAS, the applicant concluded that developing the site with the MTA Encumbrances and without the floor area waiver resulted in a nine-story building with 107,196 sq. ft. of floor area (6.0 FAR), a building height of 147’-5¾” (excluding bulkheads and parapets), and 169 hotel rooms; in contrast, developing the site without the MTA Encumbrances and without the floor area waiver resulted in a nine-story building with 107,196 sq. ft. of floor area (6.0), a building height of 147’-5¾” (excluding bulkheads and parapets), and 178 hotel rooms; thus, the unencumbered site would yield nine more hotel rooms, because back-of-house functions could be placed in the cellar, and the additional space above grade could be devoted to hotel rooms; and

WHEREAS, at hearing, the Board questioned whether locating the Ballroom on the second story contributed significantly to the premium construction costs and directed the applicant to explore a design that located the Ballroom on the 12th story and a design that omitted the Ballroom entirely; in addition, the Board requested additional information regarding the back-of-house operations; and

WHEREAS, in response, the applicant provided plans showing the relocation of the Ballroom; such plans reflect that two additional elevators would be required, resulting in a loss of 36 hotel rooms; as for the no-Ballroom scheme, the applicant contends (and supports with financial analysis) that the hotel rooms would, on average, rent for substantially less without the Ballroom; as such, the applicant asserts and the Board agrees that neither relocating the Ballroom, nor eliminating it completely yields a feasible development;

WHEREAS, the applicant also provided the programming for the back-of-house spaces within the hotel; and

WHEREAS, based upon the above, the Board finds that the MTA Encumbrances are a unique physical

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condition that create unnecessary hardship in developing the site in compliance with the floor area regulations; and

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

WHEREAS, as noted above, the applicant studied the feasibility of: (1) a complying hotel at the site; (2) a complying hotel at the site without the MTA Encumbrances; (3) the proposal with the Ballroom on the 12th story instead of the second story; (4) a 12-story hotel with 143,281 sq. ft. of floor area (7.98 FAR) and no Ballroom; and (5) the proposal; and

WHEREAS, the applicant states that only the proposal would realize a reasonable rate of return on investment; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that development in compliance with the floor area regulations would 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 surrounding neighborhood is characterized by two general typologies; along Schermerhorn Street and other wide streets, medium- to high-density mixed commercial, residential, and community facility buildings predominate; along Bond Street south of the site and other narrow streets (e.g., State Street) the prevailing character is low-density residential (townhouses) and community facility buildings; and

WHEREAS, as to adjacent uses, the applicant states that directly west of the site (across Bond Street) is a six-story office buildings, directly north of the site (across Schermerhorn Street) is a five-story parking garage; a playground abuts the site to the east and a series of four-story residential buildings abut the site to the south; and

WHEREAS, the applicant notes that the proposed hotel use is as-of-right in the subject C6-1 district and contends that the building has been designed to be sensitive to adjacent residential uses; and

WHEREAS, specifically, and in response to the Opposition's and the Board's concerns, the hotel entrance was relocated from Bond Street to Schermerhorn Street and the outdoor terrace connected to the Ballroom and adjacent to the residences to the south was removed; and

WHEREAS, turning to bulk, the applicant states that within 400 feet of the site, the buildings range in

height from one to 14 stories; beyond 400 feet but within two blocks of the site, Schermerhorn Street includes two buildings with 25 or more stories and 333 Schermerhorn, which, upon completion, will rise to 577 feet (44 stories), making it one of the tallest buildings in the borough; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information demonstrating that the proposed height is contextual; and

WHEREAS, in response, the applicant provided a height study and a photomontage of the streetscape (including buildings under construction and proposed), which, together, demonstrate that the building height is in keeping with the bulk of the surrounding neighborhood; and

WHEREAS, the applicant also notes that, aside from the requested floor area waiver, the proposal complies in all respects with the applicable bulk regulations, including building height, yards, and setbacks; and

WHEREAS, as to the Opposition's concerns regarding vehicular traffic and refuse collection, the applicant has agreed to: (1) limit all deliveries to the Schermerhorn Street loading dock; (2) limit food deliveries to Monday through Friday, from 8:00 a.m. to 4:00 p.m.; (3) coordinate and monitor all other delivery traffic (e.g., laundry) so as to mitigate traffic impacts; and (4) store refuse in a refrigerated room within the building until immediately prior to collection; and

WHEREAS, as to the Opposition's remaining concerns, the Board observes that: (1) hotel use is as-of-right at the subject site; therefore City Planning has determined that it is an appropriate use at the site, notwithstanding the proximity of residence districts; (2) the requested floor area waiver is necessary for the owner to realize a reasonable return on investment, as extensively analyzed above; and (3) ensuring that safe construction measures are undertaken (including protecting adjacent, occupied residential buildings during excavation) is primarily within the purview of 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 due to the peculiarities of the site; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

WHEREAS, 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

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environmental review of the proposed action and has documented relevant information about the project in the EAS CEQR 15-BSA-043K, dated March 10, 2015; 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, the New York City Landmarks Preservation Commission ("LPC") reviewed the project for potential archaeological impacts and requested that an archaeological documentary study be submitted for review and approval; and

WHEREAS, a Restrictive Declaration for an archaeological study was executed and filed for recording on May 12, 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; 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 to permit, on a site partially within a C6-1 zoning district, and partially within an R6B zoning district, within the Special Downtown Brooklyn District, the construction of a 13-story hotel (Use Group 5) that does not comply with the zoning requirements for FAR, contrary to ZR § 33-122; *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 May 14, 2015"—seventeen (17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of

the proposed building: a maximum of 13 stories, a maximum floor area of 154,947 sq. ft. (8.63 FAR), a maximum building height of 186'-1¾" (excluding bulkheads and parapets), and a maximum of 287 hotel rooms, as reflected on the BSA-approved drawings;

THAT the building façade abutting sites with residential buildings shall be consistent with the character and appearance of such buildings;

THAT all service pickups and deliveries to the site shall occur on the Schermerhorn Street frontage;

THAT refuse shall be stored within the building until immediately prior to collection;

THAT the above conditions shall be noted on the certificate of occupancy;

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 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 May 19, 2019;

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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 19, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 19, 2015.**  
**Printed in Bulletin No. 22, Vol. 100.**

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

