

197-08-BZ

CEQR #09-BSA-011K

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (FAR, open space ratio), §23-22 (number of dwelling units), §23-45 (front yard), §23-462 (side yard), and §23-631 (wall height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Jay Goldstein.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, decision of the Brooklyn Borough Commissioner, dated June 23, 2008, acting on Department of Buildings Application No. 301575472, reads in pertinent part:

- “1. Proposed residential Floor Area Ratio, lot coverage, and open space are contrary to ZR Section 23-141(b).
- 2. Proposed residential density requirement is contrary to ZR Section 23-22.
- 3. Proposed residential front yard requirement is contrary to ZR Section 23-45.
- 4. Proposed residential side yard requirement is contrary to ZR Section 23-462(a).
- 5. Proposed residential perimeter wall height, total building height and sky exposure plane are contrary to ZR 23-631(b);” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and, does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in the *City Record*, with continued hearings on November 10, 2009, December 15, 2009 and January 26, 2010, and then to decision on March 16, 2010; 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, Community Board 9, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Council Member Letitia James recommends approval of this application; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about neighborhood character and traffic; and

WHEREAS, certain community members provided testimony in support of the application, stating that a building on the lot would be an improvement to the existing vacant lot; and

WHEREAS, the subject site is located on the northeast corner of Troy Avenue and Carroll Street, within an R4 zoning district; and

WHEREAS, the site has 116 feet of frontage on Troy Avenue and 138'-11" of frontage on Carroll Street, and a total lot area of approximately 16,114 sq. ft.; and

WHEREAS, the site, which was formerly occupied by a one-story industrial building, is currently vacant; and

WHEREAS, the site is the subject of two prior variance applications; first, under BSA Cal. No. 173-00-BZ, the applicant sought to construct 72 dwelling units on the site, but later withdrew the application; under BSA Cal. No. 290-04-BZ, the applicant proposed to construct a six-story (including penthouse) residential/commercial building with 62,634 sq. ft. of floor area (3.89 FAR) and the application was also withdrawn; and

WHEREAS, under the subject application, the applicant initially proposed a five-story (including penthouse) residential building with a streetwall height of 47'-0", a height of 57'-6", a total floor area of 48,342 sq. ft. (3.0 FAR), a lot coverage of 72 percent, 34 dwelling units, one front yard with a depth of 6'-0", and one side yard with a width of 6'-0", and with 31 parking spaces; and

WHEREAS, the applicant now proposes a five-story (including penthouse) residential building with a streetwall height of 44'-6", a total height of 54'-6" (the maximum permitted street wall and total height are 25'-0" and 35'-0", respectively); a floor area of 48,342 sq. ft. (3.0 FAR) (the maximum permitted floor area is 21,754 sq. ft. (1.35 FAR)) one front yard with a depth of 6'-0", and one side yard with a width of 6'-0" (a front yard with a depth of 18'-0" and side yards with widths of 8'-0" and 10'-0" are required); a lot coverage of 72 percent (the maximum permitted lot coverage is 55 percent); 34 dwelling units (the maximum permitted number of dwelling units is 24); and 35 parking spaces; and

WHEREAS, the applicant proposes to provide (1) 35 parking spaces and storage in the cellar, (2) a recreation area, a lobby, and dwelling units on the first floor, and (3) dwelling units on the four upper floors; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in

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compliance with applicable zoning district regulations: due to a history of industrial uses at the site, the soil is contaminated and requires extensive remediation; and

WHEREAS, as to the soil condition, the applicant represents that soil tests reflect that there is contamination from several chemical pollutants as a result of its prior use; and

WHEREAS, specifically, the soil boring analysis reflects that there are approximately ten volatile organic compounds (VOCs), five semi-volatile organic compounds (SVOCs), and five metals found in the soil, which exceed each compound's respective Recommended Soil Cleanup Objective from the New York State Department of Environmental Conservation's Technical Guidance Memorandum No. 4046; and

WHEREAS, the applicant represents that there are costs of approximately \$1.3 million, not including expected overage, associated with the remediation of the subject site; and

WHEREAS, the applicant represents that these conditions are unique to the subject site and are not customarily found in the subject residential zoning district; and

WHEREAS, the analysis states that the remediation process is likely to include: (1) pumping out all liquids present in the drain using a vacuum truck, (2) removing all contaminated soil, (3) removing all fill material present in the subsurface soil in accordance with all relevant regulations, and (4) installing a vapor barrier under the new foundation; and

WHEREAS, the Board notes that the prior use of the site pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, the applicant has documented more than \$1.3 million in premium construction costs associated with the remediation of the site; and

WHEREAS, the applicant represents that the waivers are required to accommodate sufficient floor area and dwelling units to overcome the premium construction costs while maintaining a building with a bulk that is compatible with neighborhood character; and

WHEREAS, the Board finds that the aforementioned unique physical condition, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant submitted a financial analysis for (1) an as-of-right (1.31 FAR) residential building, without special costs; (2) an as-of-right (1.31 FAR) residential building, with special costs; and (3) the proposed (3.0 FAR) residential building; and

WHEREAS, the analysis relied on \$1.6 million in remediation costs and reflected that only the proposal realized a reasonable rate of return; and

WHEREAS, the applicant concluded that neither of the as of right scenarios would result in a reasonable

return, due to prohibitively high construction costs; and

WHEREAS, the Board directed the applicant to (1) analyze a lesser variance alternative and (2) reduce the estimated remediation costs so that only the portion of the site presumed to be contaminated, and not the entire site, was used as the basis for the premium costs; and

WHEREAS, in response, the applicant provided a lesser variance alternative for a residential building with 2.6 FAR and reduced the remediation estimate to approximately \$1.3 million; and

WHEREAS, the applicant's analysis reflects that, due to the contamination of the site, only the proposal, and not the lesser variance alternative, would realize a reasonable rate of return; and

WHEREAS, as noted, the Board directed the applicant to reduce the degree of waivers requested and to reflect the minimum variance; thus, the applicant modified the presumed remediation costs and modified the building envelope to respond to the Board's concerns; and

WHEREAS, thus, the applicant asserts that the additional FAR and other waivers are required to overcome the premium construction costs; and

WHEREAS, based upon its review of the applicant's financial studies, 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 applicable zoning 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; and

WHEREAS, the applicant states that the surrounding area is mixed use with residential buildings of varying heights; and

WHEREAS, specifically, the applicant notes that there are at least 12 four-story and taller buildings within a 400-ft. radius of the site; and

WHEREAS, the applicant notes that buildings with heights between four and six stories are common in the surrounding area; and

WHEREAS, the applicant provided a land use map and a chart, which reflects the lot size, height, and FAR of a number of buildings in the area that are comparable to the proposed bulk; and

WHEREAS, additionally, the applicant notes that there is a telephone exchange building directly across Troy Avenue, which has a height of 62'-7" and an FAR of 3.0; the two corner lots, directly to the north are both occupied by buildings with heights of approximately 50 feet and FAR of approximately 3.0; and

WHEREAS, the applicant notes that there is a new residential development on Crown Street, between Albany Avenue and Troy Avenue, which reflects two nine-story

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buildings and 300 residential units; and

WHEREAS, further, the applicant represents that since the fifth floor/penthouse level of the proposed building will be set back 18 feet, it will be barely visible from grade and the eastern portion of the building is three stories, which will provide a transition between the bulk of the proposed building at the corner to the one and two-family homes on Carroll Street; and

WHEREAS, at the Board's direction, the applicant reduced the height of the building from 57'-6" to 54'-6" and the streetwall height from 47'-0" to 44'-6"; and

WHEREAS, the Board notes that the proposed FAR, streetwall height, and total height are compatible with the neighborhood character; and

WHEREAS, the applicant also increased the number of parking spaces from 31 to 35 to provide one space for each dwelling unit; and

WHEREAS, the Board agrees that the proposed residential use is as of right and more compatible with the residential use in the area than the historic pre-existing non-conforming use or the earlier mixed-use proposal; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor 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 rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil conditions to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which pre-dates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that the originally proposed height was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed envelope was required to make the building feasible; and

WHEREAS, as noted, the applicant revised the application to reduce the degree of streetwall height and total height non-compliance; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; 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 environmental review of the proposed action and has

documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 09BSA011K, dated March 15, 2010; 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 Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials; and

WHEREAS, DEP approved the Remedial Action Plan and the Construction Health and Safety Plan on March 3, 2010; and

WHEREAS, DEP concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval and issuance of a Notice of Satisfaction; 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 R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45, *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 October 27, 2009"- thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of five stories including

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penthouse, a maximum of 34 dwelling units, a total height of 54'-6", a streetwall height of 44'-6", a floor area of 48,342 sq. ft. (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, and a minimum of 35 parking spaces, all as illustrated on the BSA-approved plans;

THAT the parking layout shall be as approved by DOB;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Notice of Satisfaction;

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;

THAT substantial construction be completed in accordance with ZR § 72-23; 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, March 16, 2010.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 16, 2010.
Printed in Bulletin No. 12, Vol. 95.**

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