254-13-BZ
CEQR #14-BSA-032K
APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.
SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R-3 zoning district.
PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.
COMMUNITY BOARD #18BK
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 14, 2013 acting on DOB Application No. 320590099, reads in pertinent part:
   Proposed floor area exceed[s] maximum permitted for bldg.
   Proposed 26 dwelling units exceed[s] maximum permitted for zoning lot
   Proposed bldg. exceed[s] maximum aggregate street width of 125’
   Proposed bldg. is within required front yard and is prohibited
   Proposed bldg. is built within one of two required side yards and is prohibited
   Proposed bldg. exceed[s] maximum height permitted;

   WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of a four-story residential building that does not comply with the zoning regulations for floor area, maximum number of dwelling units, front yards, lot coverage and height, contrary to ZR §§ 23-141, 23-22, 23-45, and 23-631; and

   WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in the City Record, with continued hearings on June 10, 2014, July 15, 2014, September 23, 2014, November 18, 2014 and December 16, 2014, and then to decision on March 31, 2015; and

   WHEREAS, Vice Chair Hinkson and Commissioners Montanez and Ottley-Brown performed an inspection of the site and premises, as well as the surrounding area and neighborhood; and

   WHEREAS, Community Board 18, Brooklyn, recommends disapproval of the application; and

   WHEREAS, the subject site is an irregularly shaped through lot with approximately 160 feet of frontage along Nostrand Avenue, and approximately four feet of frontage along Marine Parkway, to the south, and the convergence of Nostrand Avenue and Marine Parkway, to the north, within an R3-2 zoning district; and

   WHEREAS, the site has approximately 12,796 sq. ft. of lot area and is currently improved with a one-story automobile service station; and

   WHEREAS, initially, the applicant proposed to construct a new 26-unit residential building containing a total of 31,201.5 sq. ft. of floor area (2.4 FAR), comprised of four stories and a penthouse; and

   WHEREAS, in response to the Board’s concerns, the proposal was modified such that the applicant withdrew its application for a waiver related to street width pursuant to ZR §23-463 and side yards pursuant to ZR §23-631(b) and reduced the lot coverage of the building by 40 percent in order to accommodate the required parking on the surface of the lot; and

   WHEREAS, thus, the applicant now proposes to construct a four-story building with a height of forty feet (the maximum height permitted is 21’-0”) consisting of 21,827 sq. ft. of floor area (1.71 FAR) (the maximum permitted FAR is 0.5), lot coverage of 56 percent (a maximum lot coverage of 35 percent is permitted), no front yard (a front yard of 15’-0” is required) containing 19 dwelling units (the maximum number permitted is seven dwelling units); and

   WHEREAS, accordingly, the applicant seeks a variance to permit the proposed FAR for the building, the proposed number of dwelling units within the building, the proposed lot coverage of the building, the proposed height of the building, and the proposed non-complying front yard; and

   WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the unique physical condition that creates practical difficulties and unnecessary hardships in developing the site in compliance with applicable regulations relate to the significant environmental contamination at the site attributable to previous automotive related uses thereof, and the cost of remediating such contamination which result in premium construction costs; and

   WHEREAS, the applicant asserts that the site, which was used as a car wash facility for approximately 65 years, was subject to regular discharge of hazardous and toxic materials, and provided a Remedial Corrective Action Report prepared by Tri-State Drilling Technologies Inc., together with the applicant’s Environmental Assessment Statement which establish that volatile and semi-volatile organic compounds and heavy metals were present in the soil of the site, as were petroleum products and debris associated with the aforesaid automotive use; and

   WHEREAS, the applicant states that the site must be substantially excavated and soil must be removed from
WHEREAS, the applicant states that the proposed and annualized loss of $226,000, and is therefore not feasible; such of-right development would result in an contamination; and
WHEREAS, the applicant further states that an as-of-right one and two-family home development would require excavation and remediation of the soil under the existing building in an area of 5,741.5 sq. ft., to a depth of at least nine feet, as well as remediation under such a building to a depth of at least 12 feet, at an estimated cost of $1,244,610; and
WHEREAS, the applicant notes that the proposed development consisting of a single four-story building with 19 units would yield an annualized return of 1.4 percent on the total investment; and
WHEREAS, the Board inquired as to the methodology employed by the applicant in calculating the costs of the remediation necessary at the site; and
WHEREAS, the applicant clarified its methodology in evaluating the remediation costs associated with multiple scenarios, including the proposed development and the as-of-right development scenarios, which methodology includes an examination of costs including transportation and disposal costs, contractor costs, the costs of installing a vapor barrier, and the costs incurred in hiring environmental consultants, all of which are determined by the size of the project and the total volume of soil to be remediated; and
WHEREAS, based upon its review of the record, 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 use 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 provided the Board with a streetscape identifying the FAR and heights of buildings in the surrounding area, which shows that buildings in the surrounding area range in height from 11 feet to 61 feet, and noted that a number of sites exceed the allowable FAR for the zoning district; and
WHEREAS, at the hearing, the Board directed the applicant to lower the initially proposed height of the building and provide parking on the surface of the site; and
WHEREAS, in response to the Board’s directive, the applicant reduced the height of the proposed building, the number of proposed units within the building and provided the required parking on the surface of the lot; and
WHEREAS, thus, 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 will it be detrimental to the public welfare; and
WHEREAS, likewise, the Board finds, per ZR § 72-21(d), that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of
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the unique physical characteristics of the site, specifically
the site’s history of permitted industrial use as an
automobile repair shop and car wash; and
WHEREAS, finally, the applicant asserts and the
Board agrees that the current proposal is the minimum
necessary to offset the hardship associated with the
uniqueness of the site and to afford the owner relief, in
accordance with ZR § 72-21(e); as noted above, the
scope and number of waivers initially sought by the
applicant were reduced in response to the Board’s
concerns; 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, Sections 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. 14-BSA-032K, dated August 1, 2013; 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; 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 the construction of a four-story residential
building that does not comply with the zoning regulations
for floor area, maximum number of dwelling units, front
yards, lot coverage, and height, contrary to ZR §§ 23-
141, 23-22, 23-45, and 23-631, 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 “March 23, 2015” – six (6) sheets;
and on further condition:
THAT the bulk parameters of the building will be
as follows: four stories with a height of 40'-0”
consisting of 21,827 sq. ft. of floor area (1.71 FAR) and
containing 19 apartments, with no front yard, side yards
of 20'-0” and 15'-0”, a 30'-0” rear yard, lot coverage of
56 percent and 19 parking spaces;
THAT interior partitions shall be as reviewed and
approved by DOB;
THAT the applicant shall comply in all respects
with the February 2015 Remedial Action Report (RAP)
and Construction Health and Safety Plan (CHASP)
prepared in conjunction with the proposed development
and shall provide a Professional Engineer-certified
Remedial Closure Report to DEP upon the completion of
the project, which report shall indicate that all remedial
requirements as set forth in the RAP and CHASP have
been properly implemented and shall include “CEQR #
14BSA032K” as a reference to DEP; and
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 substantial construction will be completed in
accordance with ZR § 72-23;
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,
March 31, 2015.
A true copy of resolution adopted by the Board of Standards and Appeals, March 31, 2015.
Printed in Bulletin No. 15, Vol. 100.
Copies Sent
To Applicant
Fire Com’r.
Borough Com’r.
Margery Perlmutter, R.A., Esq.
Chair/Commissioner of the Board