

**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. R3-2 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; and

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, between Avenue P, 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

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the site in both the as-of-right and proposed development scenarios; and

WHEREAS, specifically, the applicant states that an as-of-right multiple dwelling 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 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 buildings to a depth of at least two feet, at an estimated cost of \$669,102; and

WHEREAS, thus, the applicant contends that there are physical conditions that create practical difficulties in constructing a building in compliance with applicable bulk regulations; and

WHEREAS, the applicant also contends that such physical conditions are unique in that they are owing to the historic use of the site for a car wash and automobile repair facility, rather than widespread neighborhood contamination; and

WHEREAS, the applicant notes that the proposed development plan requires excavation and remediation of the soil under the proposed building at a cost of \$1,441,105; and

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

WHEREAS, to satisfy ZR § 72-21(b), the applicant assessed the financial feasibility of both an as-of-right development multiple dwelling and also three as-of-right two-story buildings with one one-story building, both with the support of a financial analysis; and

WHEREAS, the applicant states that an as-of-right multiple dwelling would be comprised of a seven unit building consisting of 6,275 sq. ft. of floor area and containing seven dwelling units with an average size of 711 square feet, and that such as-of-right development would result in an annualized loss of \$2,005,000, and is therefore not feasible; and

WHEREAS, the applicant states that an as-of-right development consisting of three two-story buildings and one one-story building would consist of 6,265 sq. ft. of floor area and would contain, in total, seven dwelling units with an average size of 864 square feet, and that such as-of-right development would result in an annualized loss of \$226,000, and is therefore not feasible; and

WHEREAS, the applicant states 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 states that the surrounding area consists of a mix of single-story commercial buildings, two- and three-story residential buildings and a number of four-story apartment buildings; 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.**

