

94-08-BZ

CEQR #08-BSA-084K

APPLICANT – Law Offices of Howard Goldman, LLC, for ZTI Corp., owner; Pitkin Managers, LLC, lessee.

SUBJECT – Application April 16, 2008 – Variance (§72-21) to waive all the required accessory parking (23 spaces) for the residential portion of a mixed-use redevelopment of an existing theatre building; contrary to §25-00. C4-3 district.

PREMISES AFFECTED – 1501 Pitkin Avenue, between Legion Street and Saratoga Avenues, Block 3492, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Chris Wright.

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 Brooklyn Borough Superintendent, dated March 20, 2008, acting on Department of Buildings Application No. 310106989, reads in pertinent part:

“Respectfully request formal denial of proposed parking on attached plans. Parking does not comply with Section 25-00 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site within a C4-3 zoning district, a waiver of the required accessory parking for the residential units of a proposed mixed-use conversion of an existing building, contrary to ZR § 25-00; and

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, and then to decision on September 23, 2008; and

WHEREAS, this application is brought on behalf of POKO Partners LLC, a property manager and developer of low-income housing; and

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

WHEREAS, the site is located on a trapezoidal-shaped property bounded by East New York Avenue on the north, Legion Street on the west, Pitkin Avenue on the south, and Saratoga Avenue on the east, in a C4-3 zoning district; and

WHEREAS, the site has 211.3 feet of frontage on East New York Avenue, 100.2 feet of frontage on Legion Street, 200 feet of frontage on Pitkin Avenue, and approximately 169 feet of frontage Saratoga Avenue and has a total lot area of 27,000 sq. ft.; and

WHEREAS, the site is occupied by a vacant theater built in 1930 with a total floor area of 50,000 sq. ft.; and

WHEREAS, the applicant proposes to convert the existing theater building to a seven-story mixed-use development with two floors of retail, commercial and community facility use (50,618 sq. ft.) and five floors (78,631 sq. ft.) of residential use; and

WHEREAS, the building is proposed to have 66 residential units and a total floor area of 129,249 sq. ft. (4.79 FAR); and

WHEREAS, because of its pre-existing non-compliance with off-street accessory parking requirements, the applicant states that the Department of Buildings has granted a waiver for the required parking for the commercial, retail and community facility floor area; and

WHEREAS, the applicant states, however, that pursuant to ZR § 25-33, the project would be subject to an accessory parking requirement of 33 spaces for the residential units; and

WHEREAS, the applicant represents that no parking spaces can be provided on-site and therefore seeks a waiver of the full accessory parking requirement; and

WHEREAS, the applicant represents that the development and use of the site, otherwise conforms with all zoning district regulations; and

WHEREAS, the Board notes that the conversion of the building must be approved by DOB for compliance with all zoning district regulations; and

WHEREAS, accordingly, the Board’s review was limited to the request to waive the accessory parking requirement; and

WHEREAS, the applicant states that the following are unique physical conditions which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: the site is developed with an obsolete theater building in severe disrepair which covers the entire tax lot and that has structural limitations which preclude parking within the existing structure; and

WHEREAS, as to the lot coverage, the applicant represents that the existing building covers the entire lot area, leaving no open space available for off-street parking; and

WHEREAS, regarding the structural limitations of the existing building, the applicant states that the existing cellar is shallow and only partially excavated, making it impossible to provide sub-surface accessory parking on the site; and

WHEREAS, the applicant further states that accessory parking could be provided on the site only by construction of an indoor garage on the ground floor, including structural support, mechanicals, paving and a system for ingress and egress; and

WHEREAS, the applicant represents that the

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ground floor is currently improved with a stage and theater seating and therefore lacks the infrastructure necessary to create a conforming 33-space garage; and

WHEREAS, the applicant further represents that providing accessory parking on the ground floor would require elimination of the retail space, and that the consequential elimination of this rental stream would make the project infeasible; and

WHEREAS, at hearing, the Board asked the applicant to explain why parking was not feasible in the cellar; and

WHEREAS, in response, the applicant stated that inconsistent cellar heights and levels would require costly demolition and the construction of ramps; and

WHEREAS, the applicant further stated that such excavation would likely weaken the structure of the existing building, given its age and poor condition; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, as noted above, the site is occupied by a deteriorated theater which can no longer be used for the purpose for which it was built; and

WHEREAS, the applicant states that, as a consequence of the obsolescence of the existing theater, the subject building is predominately vacant, with occupancy limited to several small ground-floor retail establishments with square footage of less than 5,000 sq. ft.; and

WHEREAS, these retail stores provide only limited rental revenue; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as of right mixed-use scenario providing the required accessory parking on the ground floor; and (2) the proposed mixed-use project with no parking; and

WHEREAS, the applicant asserts that the as of right scenario would result in a negative rate of return and that the proposed use is the minimum necessary to achieve a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, 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 variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant represents that the development and use of the site, except for the requested accessory parking waiver, conforms with all zoning district regulations and is consistent with the community and neighborhood character; and

WHEREAS, the applicant notes that project site is located in a C4-3 corridor within an R6 zoning district, which permits medium density multiple dwellings consistent in size with the proposed project; and

WHEREAS, the applicant further states that Pitkin Avenue is one of the most active commercial centers in the area and is characterized by two-story and four-story commercial buildings, a number of which have upper stories devoted to residential use; and

WHEREAS, the applicant submitted a survey conducted on a typical weekday between the hours of 8:00 a.m. and 9:00 a.m. and between noon and 2:00 p.m., and on a Saturday between the hours of 8:00 a.m. and 2:00 p.m., which reflected that, within a quarter-mile radius of the site, more than 570 on-street parking spaces were available during a weekday morning, more than 900 spaces were available during the weekday afternoon, and 875 parking spaces were available on a typical Saturday; and

WHEREAS, the applicant represents that the conversion of the building will not generate significant parking demand because the proposed residential units would be occupied by persons with income levels at or below 50 percent of the Area Median Income who are expected to own few cars; and

WHEREAS, the applicant points out that the building is historically significant and is relatively intact; providing an accessory parking waiver would also allow the retention of more of the facade's decorative elements; and

WHEREAS, based upon its review of the record, the Board finds that the proposed waiver of the required accessory parking will neither alter the essential character of the neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title but arises due to the full lot coverage of the existing building and its structural limitations; and

WHEREAS, the applicant represents that the proposed represents the minimum variance needed to allow for a reasonable and productive use of the site; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 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) CEQR No.08-BSA-084K, dated April 9, 2008; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on

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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, 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 within an C4-3 zoning district, the elimination of 33 accessory parking spaces for a proposed mixed-use conversion of an existing building, contrary to ZR § 25-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received July 16, 2008"-(12) sheets; and *on further condition*:

THAT the internal floor layouts on each floor shall be as reviewed and approved by DOB;

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, construction will proceed in accordance with ZR § 72-23;

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, September 23, 2008.

**A true copy of resolution adopted by the Board of Standards and Appeals, September 23, 2008.
Printed in Bulletin No. 39, Vol. 93.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.