

112-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Audubon Housing Dev. Fund Corp., owner.

SUBJECT – Application June 5, 2006 – Variance application pursuant to Z.R. §72-21 to permit the construction of a seven-story and cellar residential and commercial building with accessory supportive social services. The accessory supporting social services programs and commercial component will be located on the first floor. The residential component will be located on floors 1 through 7. The premises is located in an M1-4 zoning district. The site was most recently used for automobile sales and storage. The proposal seeks to vary, based on the nearby R7-1 zoning district, Z.R. §23-142 (Residential Floor Area), §24-111 (Total Floor Area), §23-142 (Open Space), 23-22 (Number of Dwelling Units), and §23-632 (for Wall Heights, Total Height, Setbacks, Sky Exposure Plane, and Number of Parking Spaces).

PREMISES AFFECTED – 507 East 176th Street, northwest corner of Third Avenue and 176th Street, Block 2924, Lots 38, 39, 42, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Otley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 5, 2006, acting on Department of Buildings Application No. 201051404, reads, in pertinent part:

“Proposed (7) seven story residential building in an M1-4 zoning district is contrary to section 42-00 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-4 zoning district, the proposed construction of a seven-story with cellar residential/commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 26, 2006 after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

WHEREAS, this application is brought on behalf of Audubon Housing Development Fund Corporation (“Audubon”), a not-for-profit entity; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, Borough President Adolfo Carrion, Jr., State Senator Efrain Gonzalez, Jr., Public Advocate Betsy Gotbaum, and Congressman Jose E. Serrano all provided testimony in support of this application; and

WHEREAS, the Administration for Children’s Services, the Corporation for Supportive Housing, and New York City’s Department of Housing Preservation

and Development also provided testimony in support of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the site, comprised of Lots 38, 39, and 42, has a lot area of approximately 6,980 sq. ft., and is on the northwest corner of Third Avenue and 176th Street, with 56 feet of frontage along Third Avenue and 120 feet of frontage along 176th Street; and

WHEREAS, the site is currently vacant and undeveloped, except for a small metal garage located in the northern portion of the lot; and

WHEREAS, the applicant proposes to construct a seven-story with cellar residential/commercial building; and

WHEREAS, the building will contain 68 studio apartments; and

WHEREAS, the commercial space will be located on the first floor and cellar level (along Third Avenue and for approximately 27 feet along 176th Street); the dwelling units will be located on floors one through seven; and the accessory supportive social services space will be located on the first floor; and

WHEREAS, the commercial component on the first floor will occupy 1,499 sq. ft. of floor area; the residential component will occupy a total of approximately 35,097 sq. ft. on floors one through seven, with 1,202 of that occupied by accessory social services space on the first floor; and

WHEREAS, the proposed building will have a total floor area of 36,596 sq. ft.; a total FAR of 5.243; a residential floor area of 35,097 sq. ft.; a residential FAR of 5.028; a commercial floor area of 1,499 sq. ft.; a street wall and total height of 72’-8”; 1,752 sq. ft. of open space; an open space ratio of 4.99 percent; and no parking spaces; and

WHEREAS, as to programmatic needs, the applicant represents that the proposed housing program will allocate approximately 60 percent of the units for young adults who no longer qualify for foster care and 40 percent for other low-income young adults from the surrounding neighborhood; and

WHEREAS, the applicant represents that Audubon worked closely with HPD to design the facility with components of existing facilities with comparable missions; and

WHEREAS, further, the applicant represents that the design includes access to onsite accessory social service programming, which includes training, counseling, and case management; and

WHEREAS, additional onsite amenities include a garden in the rear courtyard, laundry facilities, and a green roof to promote energy efficiency; and

WHEREAS, the applicant further represents that in order to qualify for funding from HPD, Audubon must provide a minimum of 68 apartments; and

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WHEREAS, the applicant notes that the construction of 68 livable apartments at the site requires a certain minimum amount of floor area and access to light and air which, in turn, necessitates the requested building envelope; and

WHEREAS, however, since the site is within the subject manufacturing district, the requested use waiver is required; 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: (1) the surface and subsurface contamination and the resultant need for remediation; (2) the high ground water table; (3) the history of uses at the site; and (4) the inability to support manufacturing use at the site; and

WHEREAS, as to the contamination, the applicant represents that soil borings indicate that there are high levels of semi-volatile organic compounds, petroleum hydrocarbons, and metals at the site; and

WHEREAS, the applicant represents that this condition requires that any soil to a depth of ten feet is to be considered contaminated and must be disposed of in accordance with applicable regulations; and

WHEREAS, the applicant has documented the costs associated with the remediation; and

WHEREAS, as to the water table, the applicant represents that the soil borings indicate that the site has a high water table and that groundwater has been measured at depths of 12'-0" to 12'-6"; and

WHEREAS, the applicant represents that additional construction measures, including the installation and maintenance of multiple sump pumps and a dewatering system, are required to accommodate the high water table and make the building water tight, both during construction and after its completion; and

WHEREAS, the applicant represents that remediation measures may also be necessary prior to discharging groundwater at the site into the sewer system; and

WHEREAS, the applicant has submitted reports from a geotechnical consultant supporting these assertions; and

WHEREAS, as to the history of use at the site, the applicant represents that all three of the subject lots have a history of residential use and that they have all been vacant since approximately 1984; and

WHEREAS, the applicant has submitted Sanborn maps that support this assertion; and

WHEREAS, as to the viability of a manufacturing use at the site, the applicant represents that there are a large number of vacant sites in the area, and that only four sites within a 400-ft. radius of the site are occupied with manufacturing uses; and

WHEREAS, further, the applicant notes that two of the four sites occupied by manufacturing uses are significantly larger than the subject site; and

WHEREAS, the applicant submitted a 400-ft. radius diagram in support of this assertion; 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 strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, as to residential use, the applicant states that the proposed building is located across Third Avenue from an R7-1 zoning district and is surrounded by residential buildings; and

WHEREAS, specifically there is a four-story multiple dwelling adjacent to the site to the north along Third Avenue, and a four-story multiple dwelling adjacent to the site along 176th Street; and

WHEREAS, additionally, there is a 118-unit eight-story residential building one block from the site at 176th Street and Bathgate Avenue; and

WHEREAS, the applicant represents that there are also a significant number of community facility uses in the vicinity, including an elementary school, three churches, two health centers, and a library all within one block of the subject site; and

WHEREAS, the applicant also notes that Crotona Park is directly across the street from the site; and

WHEREAS, as to commercial use, the applicant notes that the proposed as-of-right commercial use is situated on Third Avenue, which has a commercial context; and

WHEREAS, as to parking, the applicant asserts that because the future residents will be low-income young adults, substantial car ownership is not anticipated and the absence of the 20 required spaces will not have a negative impact on the character of the neighborhood; and

WHEREAS, as to bulk, the applicant represents that buildings within the 400-ft. radius of the site range in height from one story to eight stories; and

WHEREAS, based upon the above, 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 the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as discussed above, Audubon requires a minimum number of housing units in order to achieve its programmatic needs; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Audubon to carry out the stated needs; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required

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to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; 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. 06BSA095X, dated June 14, 2006; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: (1) an Environmental Assessment Statement Form, dated June 14, 2006; (2) Phase I Environmental Site Assessment Report dated January 2006 and a Phase II Subsurface Investigation Report received on August 11, 2006; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality and noise impacts; and

WHEREAS, a Restrictive Declaration was executed on October 4, 2006 and submitted for proof of recording on October 6, 2006, which requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the Restrictive Declaration and the Applicant's agreement to the conditions noted below; 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 in an M1-4 zoning district, a proposed seven-story with cellar residential/commercial building, which is contrary to ZR § 42-00, *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 3, 2006"-(6) sheets; and *on further condition*:

THAT any change in ownership, operator, or control of the building shall require the prior approval of the Board;

THAT the above condition shall be listed on the certificate of occupancy;

THAT the parameters of the proposed building shall be: a total floor area of 36,596 sq. ft.; a residential floor area of 35,097 sq. ft.; a commercial floor area of 1,499 sq. ft.; a total FAR of 5.243; a residential FAR of 5.028; a street wall height of 72'-8"; and a total height of 72'-8" (without bulkhead);

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the

hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the internal floor layouts on each floor of the proposed building 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 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, October 17, 2006.