

19-06-BZ

CEQR #06-BSA-052X

APPLICANT – Sheldon Lobel, P.c., for MiCasa HDFC, owner.

SUBJECT – Application January 27, 2006 – Under §72-21 to permit a proposed eight-story residential building which requires variance of Z.R. §§23-145 (floor area), 23-633 (height and setback) 25-25c (parking), 23-851(court regulations) and 23-861 (legal window), located in an R7-1 zoning district.

PREMISES AFFECTED – 745 Fox Street, entire block front of East 156th Street between Fox Street and Beck Street, Block 2707, Lot 11, Borough of The Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 15, 2004, acting on Department of Buildings Application No. 401843243, reads, in pertinent part:

“Floor Area: Floor area does not comply with ZR 23-145 of the Quality Housing Regulations. Proposed residential floor area exceeds maximum allowed floor area of 68,800 S.F.

Wall Height: Proposed wall height does not comply with ZR 23-633c. Proposed wall height exceeds maximum wall height of 60’

Total Height: Total height does not comply with ZR 23-633c. Proposed total height exceeds maximum total height of 75’

Setback: Proposed setback does not comply with 23-633b. Proposed zero setback does not comply with required 20’ setback.

Court Regulations: Court does not comply with ZR 23-851. Proposed courtyard depth is less than minimum dimension of 30’

Legal Windows: Distance from wall does not comply with ZR 23-861. Proposed wall is less than minimum distance of 30’

Parking: Provision of parking spaces does not comply with ZR 25-25c. No parking spaces are provided.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-1 zoning district, the proposed construction of an eight-story plus basement residential building that exceeds the permitted Floor Area Ratio (FAR), wall height, and total height, and does not provide the required setback, courtyard depth, window distance from wall, and parking, contrary to ZR §§ 23-145, 23-633, 23-851, 23-861, and 25-25; and

WHEREAS, a public hearing was held on this

application on April 11, 2006 after due notice by publication in The City Record, and then to decision on May 2, 2006; and

WHEREAS, this application is brought on behalf of MiCasa HDFC, a not-for-profit entity; and

WHEREAS, Community Board 2, Bronx, recommends approval 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, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins; and

WHEREAS, the site’s lot area is 20,000 sq. ft., and it encompasses the entire 200 foot length of the block on the southern side of 156th Street, extending 100 feet south along Fox and Beck Streets; and

WHEREAS, the premises is located in the Longwood Historic District, as designated by the New York City Landmarks Preservation Commission (LPC); and

WHEREAS, the site is currently improved upon with a two-story 8,707 sq. ft. historic structure that the applicant contends is in poor condition and has been vacant for twenty years; and

WHEREAS, the applicant notes that due to the regulations governing the Longwood Historic District, the existing building may not be demolished and its rehabilitation is subject to LPC guidelines; and

WHEREAS, the applicant proposes to rehabilitate the existing historic structure for use as a community facility; and to develop the remainder of the site with an eight-story plus basement 95-unit residential building; and

WHEREAS, the proposed building will have a total floor area of 89,850 sq. ft. (96,000 sq. ft. is the maximum permitted); a total FAR of 4.49 (4.8 is the maximum permitted); a residential floor area of 82,447 sq. ft. (68,800 sq. ft. is the maximum permitted); a total residential FAR of 4.12 (3.44 is the maximum permitted); a total community facility floor area of 7,403 sq. ft. (20,000 sq. ft. is the maximum permitted); a total community facility FAR of .37 (1.0 is the maximum permitted); a street wall height of 78 feet (60 feet is the maximum permitted), without a setback (a 20 foot setback is the minimum required); a total height of 78 feet (75 feet is the maximum permitted); and no parking spaces (14 spaces are required); and

WHEREAS, the Board notes that the applicant initially requested a waiver for a street wall height of 83 feet, though the LPC approved a street wall height of 78

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feet; and

WHEREAS, the applicant subsequently amended the street wall height to 78 ft.; and

WHEREAS, the applicant represents that the proposed housing program will provide 30 percent of the units for homeless grandparents raising children and 70 percent for other low-income senior citizens, and was designed in collaboration with New York City's Housing Development Corporation (HDC) and Department of Housing Preservation and Development, and the New York State Homeless Housing Assistance Program (HHAP); and

WHEREAS, further, the applicant represents that design includes access to the onsite community facility with social service programming; 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 compliance with underlying district regulations: (1) the site is occupied by an historic structure, under the jurisdiction of LPC, the exterior of which cannot be altered or demolished; and (2) the subsurface of the site has an irregular rock composition and significant slope; and

WHEREAS, the applicant asserts that the existence of the historic structure on the site hinders as of right development in two primary ways: (1) its orientation at an angle in relationship to the street results in constraints on design options; and (2) because of its landmark status, floor area may not be constructed above it; and

WHEREAS, these two restraints necessitate the shift of the new building's bulk to other parts of the site unoccupied and not affected by the historic structure; and

WHEREAS, this results in the need for some of the cited waivers; and

WHEREAS, specifically, because the new building must avoid the diagonally-positioned historic structure and leave an area in front for a forecourt to allow for its visibility from Beck Street, an irregularly-shaped courtyard, without the required 30 ft. depth, is formed; hence, courtyard relief is necessary; and

WHEREAS, additionally, in order to keep the Beck Street portion of the building low, to match adjacent townhouses, the bulk of the building, which normally could be distributed over the entire site, now is situated primarily along 156th and Fox Streets; and

WHEREAS, this results in a non-complying wall height and total height, and the inability to provide a required setback; hence, waivers for these three provisions are necessary as well; and

WHEREAS, the proposed building will also be situated in relation to the existing structure such that there will be a range of distances between windows and walls,

with a depth at one point of 15'-7"; since this depth is non-complying, a waiver of the minimum distance requirements is also necessary; and

WHEREAS, as to floor area, the applicant notes that in order to qualify for funding from HDC, HHAP and other city, state, and private sources, the applicant must provide a minimum of 95 apartments; and

WHEREAS, creating 95 livable apartments requires a certain amount of floor area; and

WHEREAS, further complicating matters is the site's unique subsurface condition; and

WHEREAS, specifically, the applicant cites to a geotechnical report that reflects an uneven distribution of subsurface rock formation and a drop in slope of ten feet along 156th Street, from Beck Street to Fox Street; and

WHEREAS, due to the unique subsurface conditions, it is cost-prohibitive to excavate a full cellar; and

WHEREAS, thus, program functions that could have been placed in the cellar are now above grade and count as floor area; this fact, along with the need to create a minimum of 95 units, necessitates the floor area waiver; and

WHEREAS, finally, the parking waiver is also a result of the subsurface conditions combined with MiCasa's programmatic needs; and

WHEREAS, specifically, the difficulty of constructing a cellar eliminates the possibility of constructing a below grade parking lot, and use of the basement or first floor for parking would significantly diminish the amount of space at those levels for the ancillary programs; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of MiCasa's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance 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, the applicant states that the proposed eight-story street wall without a setback is compatible with the seven-story multi-family building adjacent to the site on Fox Street, and with the numerous five, six, and seven-story multi-family buildings along Fox Street, 156th Street, Legget Street, and Southern Boulevard; and

WHEREAS, the applicant asserts that the open space around the historic structure would maintain its

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visibility and contribute to the character of the surrounding historic district; and

WHEREAS, the applicant further asserts that the resulting courtyard depths and window to wall distances allow for considerable landscaped open space that would also contribute to the character of the neighborhood; and

WHEREAS, the Board also notes that LPC determined that the proposed development will not alter the historic character of the neighborhood and issued the applicant a Certificate of Appropriateness (“C of A”) for the proposal; in its report, LPC noted characteristics such as floor to ceiling heights that are proportional to those of adjoining buildings and the harmonious transition to neighboring row houses; and

WHEREAS, finally, as to parking, the applicant asserts that because the future residents will qualify as low-income and the vast majority will be elderly, substantial car ownership is not anticipated and the absence of the 14 required spaces will not have a negative impact on the character of the neighborhood; 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, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, 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 a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the subject site is located within the Longwood Historic District (and Extension) and as previously noted in this resolution, a C of A has been issued for this proposal by the LPC on December 15, 2005; 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.06BSA052X, dated February 22, 2006.

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, LPC has reviewed an Environmental Assessment Statement Form, dated April 2, 2004; and

WHEREAS, based on its review of archaeological sensitivity models and historic maps, LPC has determined that there is the potential presence of archaeological resources on the site, including the potential for the recovery of remains from 19th century occupation of the Site; and

WHEREAS, LPC requested that the applicant prepare an archaeological documentary study to clarify these initial findings; and

WHEREAS, the applicant decided to prepare a restrictive declaration that would incorporate conditions designed to address these archaeological concerns; and

WHEREAS, this restrictive declaration was executed on April 7, 2006 and recorded on April 19, 2006; and

WHEREAS, LPC has determined that there will not be any impacts from the subject proposal, based on the implementation of the measures cited in the restrictive declaration and the applicant’s compliance with the conditions noted below; 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 Type I 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 the required findings under ZR § 72-21, to permit, within an R7-1 zoning district, the proposed construction of an eight-story plus basement residential building that exceeds the permitted FAR, wall height, and total height, and does not provide the required setback, courtyard depth, window distance from wall, and parking, contrary to ZR §§ 23-145, 23-633, 23-851, 23-861, and 25-25; *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 “April 27, 2006”– (16) sheets; and *on further condition*:

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

THAT the above condition shall be listed on the

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certificate of occupancy;

THAT the applicant or any successor in title will adhere to all requirements for archaeological identification, investigation, and mitigation as set forth in the CEQR Technical Manual and LPC's Guidelines for Archaeological Work in NYC, including without limitation, the completion of an archaeological documentary study, archaeological field testing, excavation, mitigation, curation of archaeological resources, and a final archeological report, as required by the LPC, and as memorialized in the restrictive declaration executed on October 18, 2005 (collectively, the "Archaeological Work");

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 Archaeological Work to the satisfaction of LPC and submit a written report that must be approved by LPC; the only exception to this condition shall be those soil disturbing activities necessitated by the applicant's performance of the Archaeological Work required for LPC's approval (such as archaeological "pits") that may require a DOB permit;

THAT any DOB permit issued for soil disturbing activities pursuant to this exception shall clearly state on its face that such soil disturbance is limited to that necessary to perform the mandated archaeological work;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the Chairperson of LPC shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Archaeological Work has been completed to the satisfaction of LPC;

THAT the parameters of the proposed building shall be as follows: a residential FAR of 4.12; a total floor area of 89,850 sq. ft., a residential floor area of 82,447 sq. ft.; a community facility floor area of 7,403 sq. ft.; a total FAR of 4.49; a residential FAR of 4.12; a community facility FAR of .37; a street wall height of 78 feet; and a total height of 78 feet (without bulkhead);

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, May 2, 2006.

A true copy of resolution adopted by the Board of Standards and Appeals, May 2, 2006.

Printed in Bulletin No. 19, Vol. 91.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.