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**BOARD OF STANDARDS AND APPEALS**

**MEETING OF:** February 7, 2022  
**CALENDAR NO.:** 2019-95-BZ  
**PREMISES:** 19 Maspeth Avenue, Brooklyn  
Block 2893, Lot 1

**ACTION OF BOARD — Application withdrawn without prejudice.**

**THE VOTE —**

**Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner  
Ottley-Brown, Commissioner Sheta, and Commissioner  
Scibetta.....5**  
**Negative:.....0**

**THE RESOLUTION —**

The decision of the Department of Buildings (“DOB”), dated May 7, 2019, acting on Application Type Alteration 1 No. 321939694, reads in pertinent part: “Proposed Use Group #2 residential use in C8-2 district does not conform to the use regulations of section 32-10 et. seq of the Zoning Resolution and must be referred to the Board of Standards and Appeals.”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, in a C8-2 zoning district, the construction of a six-story, mixed-use commercial and residential building with conforming commercial use on the ground floor and residential uses on the upper floors, contrary to Z.R. § 32-10 and to the zoning requirements for FAR (Z.R. § 33-123).

A public hearing was held on this application on January 12, 2021 after due notice by publication in *The City Record*, and then to decision on February 7, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood. Community Board 1, Brooklyn, recommends denial of this application unless the applicant meet the following conditions: to provide three affordable apartments, two one-bedrooms and one two-bedroom, up to 60% Average Median Income (“AMI”); and the applicant conduct a full archeological study with a qualified archeologist. The Board received two form letters of support and three letters of objection, citing concerns over decreased quality of life from overcrowding, loss of sunlight and air, increased traffic, and noise from construction.

The Premises are located at the northeast intersection of Maspeth Avenue and Bushwick Avenue and are a triangular, full block site bounded by Maspeth Avenue to the south, Conselyea Street to the north and east, and Woodpoint Road to the west, within a C8-2 zoning district, in Brooklyn. With approximately 131 feet of frontage along Maspeth Avenue, 56 feet of frontage along Woodpoint Road, 109 feet of frontage along Conselyea Street,

and 2,967 square feet of lot area, the Premises are occupied by an existing parking lot.

The applicant proposed to construct a six-story, mixed-use commercial and residential building that would consist of (i) a commercial space occupying the ground floor, with a total commercial floor area of 2,468 square feet; and (ii) residential units occupying the second through sixth floors, with a total residential floor area of 14,916 square feet with a total FAR of 5.86. The applicant represents that the building's cellar level would be used for bicycle storage, accessory residential storage, space for building mechanicals, and storage for the building's ground floor commercial tenant; the ground floor would include a residential lobby with frontage on Conselyea Street and a commercial unit that would wrap around the lobby. The applicant states that because the residential lobby extends from Conselyea Street to Maspeth Avenue, the commercial unit would consist of three sections: the first section, to be located on the left side of the residential lobby, would be an irregularly shaped retail area with an entrance on Woodpoint Road; the second section, to be located to the right of the lobby, would be a triangular shaped retail space with an entrance on Maspeth Avenue; and the third section would be a narrow walkway that connects the first and second sections. The applicant further states that the proposed building on floors two through six would have a total of 15 residential apartments, with three apartments on each floor. The applicant describes that each floor would have a 920 square foot triangular two-bedroom apartment to the right of the building core and two one-bedroom apartments to the left of the building core. The applicant further represents that the smaller, one-bedroom apartments would have an area of 515 square feet, and the larger, one-bedroom apartments would have an area of 823 square feet. Finally, the applicant declares that the roof of the proposed building would have recreation space for the building's residential tenants.

By letter dated December 29, 2020, the Fire Department states that it objects to the application in that the rooftop access has not been provided. As per Section 504.4.1 of the 2014 Fire Code, "Access to building rooftops shall be provided for fire operations by providing unobstructed access to the rooftop, including unobstructed passage across the building parapet, perimeter fence, or other obstructions, and a safe landing...." Based upon the foregoing, the Fire Department requests that the Board of Standards and Appeals not accept this application as filed. Plans shall be revised to show compliance with Section 504.4.1 for Fire Department Rooftop Access.

By correspondence dated October 1, 2018, the New York City Landmarks Preservation Committee ("LPC") states LPC review of archeological sensitivity models and historic maps indicates that there is potential for the recovery of remains from Colonial or 19th Century occupation on the project sites. The project site's location is adjacent to Bushwick Reformed Dutch Church Cemetery. Accordingly, the Commission recommends that an archaeological documentary study be performed for this site to clarify these initial findings and provide the threshold for the next level of review if such review is necessary (*see* CEQR Technical Manual 2014).

At hearing, the Board expressed concerns regarding the extent of the applicant's requested waiver and noted that the applicant had not requested the minimum variance, as per Z.R. § 72-21 (e), and used inflated construction and capitalized costs that were not supported by evidence or breakdowns to bolster its hardship argument, as per Z.R. 72-21 (a). The Board also observed that the application lacked several necessary aspects to meet its Z.R. § 72-21 (c) findings. The Board stated that the application as submitted did not provide enough information so that it could assess the impact of the building on the neighbors, such as contextual drawings with renderings of the building in place; a depiction of the minimum request alternative as an as-of-right use with only a parking waiver; the parking calculations for the as-of-right uses; the site's proximity to public transit; car ownership in this census tract; and an analysis of the potential impacts on the surrounding area if no parking is provided for the units.

Moreover, the Board stressed that the applicant had not justified its request for additional floor area, especially since, based on the applicant's Uniqueness Study, the buildings adjacent to the subject site have between 0.00 and 3.00 FAR and are conforming uses, whereas the proposed building would be a non-conforming use. Additionally, the Board observed the nearest residential district is an R6A zoning district, which has a maximum allowable FAR of 3.00 (*see* Z.R. § 23-151), and as the applicant argued that the only use for the subject site is residential, the Board would be limited in how much of an FAR waiver it could grant. The Board stated that this difference in the applicant's request and the potential grant may mean this proposed building is not viable. Additionally, the Board stated that in an R6A zoning district, parking is required for 50% of the units and is waived if that number is less than five parking spaces (*see* Z.R. § 25-23), but, here, the applicant proposed 15 residential units, for which 8 spaces is required.

Furthermore, the Board discussed the applicant's Efficiency Analysis, which used a 30'-0" by 100'-0" corner lot as the example building instead of the generally presented example of an interior lot. The Board stated that the study's example corner lot benefits from the easy building access from two street frontages and to the remote core as well as a better layout for the commercial floor which could have an enclosed reception area. As the example corner lot does not increase the premium delta between the proposed example and proposed site as much as an interior lot example would, the Board concluded that the Efficiency Analysis demonstrated the advantages of the site's long and multiple frontages which allow the applicant to make more use of a window wall, the efficient location for the core, and access to retail, stairs, and elevator core with leftover usable space for corridors.

Finally, the Board compared this subject application to BSA Cal. No. 105-15-BZ, in which the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R4 zoning district, the development of a three-story, mixed-use commercial and community facility building that does not comply with zoning regulations for floor area (Z.R. § 24-11), lot coverage (Z.R. § 24-11), front yards (Z.R. § 24-31), parking (Z.R. § 25-31), and use contrary to Z.R. § 22-00, on a 7,965 square foot triangular lot with contamination. Although the site in BSA Cal. No 105-15-BZ has more

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square footage than the subject site, the Board detailed how the physical configuration of the two Premises are similar, but the site in the subject application does not have the added burden of contamination. The Board requested the applicant distinguish this current application and BSA Cal. No. 105-15-BZ, in which the applicant claimed that the site was not suitable for a residential use and could not be developed without the requested waivers, in part, because the triangular site was surrounded on four sides by roadways, and, here, where the applicant claims its similarly situated site is suitable for residential. The Board described how a triangular site with a core in the center of the building is inefficient for commercial and residential use because the need to split the site into left and right units, as opposed to creating full floor units, results in a shape that affects the desirability of any commercial, retail, and rental space. The Board noted that, here, the applicant could propose a commercial use for the entire lot and request a parking waiver so that it may use the available 4.8 FAR available for community facility use in a C8-2 zoning district (*see* Z.R. § 33-123) and, thereby, make use of the full floor plate at the Premises.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated January 28, 2022, the applicant requested to withdraw the application without prejudice.

*Therefore, it is Resolved,* that this application is hereby *withdrawn* without prejudice.

**Adopted by the Board of Standards and Appeals, February 7, 2022.**

**CERTIFICATION**

**This copy of the resolution  
dated February 7, 2022  
is hereby filed by the  
Board of Standards and Appeals  
on February 24, 2022.**



**Carlo Costanza  
Executive Director**