

218-03-BZ

CEQR #03-BSA-218Q

APPLICANT – Gerald J. Caliendo, R.A., for TTW Realty LLC, owner.

SUBJECT – Application June 25, 2003 – under Z.R. §72-21 to permit the proposed nine-story mixed use building with residential, commercial and community facility uses, located in an M1-1 zoning district, which does not comply with the zoning requirements for the uses, permitted floor area, total height and perimeter wall, is contrary to Z.R. §42-00, §23-141 and §23-631. PREMISES AFFECTED – 19-73 38th Street, corner of 20th Avenue, Steinway Street and 38th Street, Block 811, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 20, 2003, acting on Department of Buildings Application No. 401444923, reads, in pertinent part:

- “1. Proposed U.G. 2 residential multiple dwelling in M1-1 contrary to section 42-00 Z.R.;
2. Proposed U.G. 4A Community Facility in M1-1 contrary to section 42-00 Z.R.;
3. Proposed accessory parking for community facility and residential multiple dwelling in M1-1 contrary to section 42-00 Z.R.;
4. There are no bulk requirements for residential development and community facility in an M1-1 Zoning District FAR of 1.0 as permitted in M1 is exceeded by proposed development refer to Board of Standards and Appeals.”; and

WHEREAS, a public hearing was held on this application on March 30, 2004 after due notice by publication in the City Record; with continued hearings on May 25, 2004, July 20, 2004, September 14, 2004, November 9, 2004, January 25, 2005, April 5, 2005, and then to decision on July 12, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Chin; and

WHEREAS, both the Queens Borough President and Community Board 1, Queens, recommend approval of this application; and

WHEREAS, this is an application under Z.R. §72-21, to permit, within an M1-1 zoning district, the

proposed development of a four-story mixed-use building with residential, commercial and community facility uses and accessory parking, which does not comply with the zoning requirements for use, contrary to Z.R. §42-00; and

WHEREAS, the premises is a large vacant rectangular site bounded by 20th Avenue on the south, Steinway Street to the east and 38th Street to the west; the total lot area is 60,016 sq. ft.; and

WHEREAS, the applicant’s current proposal contemplates a 99,258 sq. ft. “U” shaped, four-story mixed use building with commercial/community facility uses on the first floor, 84 residential units on the second through fourth floors, and a cellar that would include an accessory gym, storage room, mechanical room and an accessory parking garage with 219 parking spaces; and

WHEREAS, the applicant’s original proposal contemplated a 150,041 sq. ft., ten-story, mixed use building, consisting of 108 dwelling units, an accessory parking garage with 195 parking spaces in the cellar, and retail and community facility uses on the ground floor; and

WHEREAS, an interim proposal contemplated a 120,008 sq. ft., four-story, mixed-use building that occupied the entire zoning lot; and

WHEREAS, the applicant has modified its original proposal to the current proposal at the direction of the Board;

WHEREAS, the building will contain 19,738 sq. ft. of retail on the ground floor, 2,521 sq. ft. of a community facility on the ground floor, and 76,986 sq. ft. of residential on floors two through four; and

WHEREAS, the lot is currently used for storage of motor vehicles, and was previously operated as a bus facility for storage, maintenance, and fueling of buses; and

WHEREAS, the applicant states that the bus facility was abandoned in 1988 and was demolished in 1991; a large volume of building and foundation debris has remained onsite; and

WHEREAS, the applicant represents that in 1997 the site was subject to environmental remediation including the removal of ten underground storage tanks, 1,864 tons of petroleum-contaminated soil and debris, 18 hydraulic bus lifts, and an oil/water separator; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) prior uses on the site have resulted in contamination of the soil; and (2) the poor condition of the site’s soil will require deep piles for any construction on the site; and

WHEREAS, the applicant submitted Phase I and Phase II environmental reports that document the soil

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contamination on the site; and

WHEREAS, in further support of the claim that there are substandard soil conditions on the site, the applicant has submitted boring logs and engineer's reports: two of the reports indicate unsuitable materials up to 48 feet and three indicate unsuitable materials up to 28 ft.; and

WHEREAS, the applicant represents that these substandard soil conditions require costly pile foundations with short and long pile tips 30 to 60 feet below ground level; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with applicable zoning regulations; and

WHEREAS, at the Board's request, the applicant submitted a feasibility study analyzing the following development alternatives on the site: (1) conforming one-story manufacturing building; (2) conforming one-story and cellar retail building; (3) 26 three-story, three-family residential buildings; and (4) 84 rental apartments with an enclosed courtyard; and

WHEREAS, the applicant submitted two estimates of the environmental cleanup costs for the site: both estimates are approximately \$3,000,000; and

WHEREAS, in response to Board concerns that the remediation costs for this site would differ based on the type of development, the applicant submitted a revised financial feasibility analysis including varying remediation costs depending upon the four alternatives listed above; and

WHEREAS, the revised feasibility analysis stated that costs would range from \$712,000 for the manufacturing use to \$1,263,000 for the retail use; such costs made the manufacturing and retail proposals infeasible as the applicant would not be able to realize a reasonable rate of return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with the use provisions applicable in the subject zoning district will provide a reasonable return; and

WHEREAS, the applicant further states that the subject lot fronts on a major commercial thoroughfare, and is adjacent to and across the street from a C2-2 commercial overlay in an R5 zoning district, and thus will not alter the essential character of the neighborhood; and

WHEREAS, the Board notes that the applicant has reduced the number of stories from the initial proposal from ten to four and has decreased the F.A.R. from 2.5 to 1.65, thus making the proposed building more compatible with the surrounding buildings; and

WHEREAS, the Board notes further that the

subject site is located adjacent to R4 and R5 districts; and

WHEREAS, the applicant has submitted a land use map that shows a number of three-story, mixed-use buildings along Steinway Street and four-story, mixed-use buildings along 21st Avenue;

WHEREAS, the applicant represents that given the parking demand in the area, the proposed number of parking spaces is not excessive and will serve only as accessory parking for the building's commercial, community and residential uses; and

WHEREAS, in response to the Board's concerns, the applicant has increased the setback at the rear of the proposed building, from 20 feet to 30 feet, to act as a buffer between the residential portion of the building and the adjacent warehouse building; 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, after submitting several revised proposals at the direction of the Board, the applicant has reduced its initial proposal from a ten story building to a four story building and lowered the F.A.R. from 2.5 to 1.65; and

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; 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. 03BSA218Q, dated October 22, 2004; 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, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the

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following submissions from the Applicant: (1) an Environmental Assessment Statement Form, dated October 22, 2004; (2) April 1997 Limited Phase II Investigation Report; (3) a March 2005 Phase I Environmental Site Assessment (ESA) Report; (4) an April 29, 2005 letter regarding the Phase I ESA Report and DEC records; (5) a May 9, 2005 Revised Parking Garage Air Quality Analysis and Industrial Air Quality Analysis; and (6) a May 6, 2005 Draft Restrictive Declaration; 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 and recorded on June 24, 2005 for the subject property to address hazardous materials concerns; 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

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, 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 Z.R. § 72-21, to permit, within an M1-1 zoning district, the proposed development of a four-story mixed-use building with residential, commercial and community facility uses and accessory parking, which does not comply with the zoning requirements for use, contrary to Z.R. § 42-00; 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 1, 2005"—(9) sheets; and on further condition:

THAT the bulk parameters of the proposed building shall be as follows: a total F.A.R. of 1.65 (99,258 sq. ft. maximum total floor area); maximum

residential floor area of 76,986 sq. ft.; maximum community facility floor area of 2,521 sq. ft.; and a maximum building height of 53 ft.;

THAT there shall be a maximum of 84 units;

THAT a maximum of 219 parking spaces shall be provided in the accessory parking levels;

THAT the interior layout, parking layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 12, 2005.

A true copy of resolution adopted by the Board of Standards and Appeals, July 12, 2005.

Printed in Bulletin Nos. 28-29, Vol. 90.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.