

241-02-BZ

CEQR #03-BSA-032K

APPLICANT - Sheldon Lobel, P.C., for HFK Inc., owner.

SUBJECT - Application August 30, 2002 - under Z.R. §72-21 to permit the proposed conversion to residential use, of two connected vacant manufacturing building, Use Group 2, located in an M2-1 zoning district, that will provide 48 residential loft type units, and is contrary to Z.R. §42-00.

PREMISES AFFECTED - 130 Third Street, corner of Bond and Third Streets, Block 466, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES -

For Applicant: Janice Cahalane.

THE ACTION OF BOARD - Application Denied.

THE VOTE TO GRANT -

Affirmative:0

Negative: Vice-Chair Babbar, Commissioner Caliendo and Commissioner Miele.....3

Abstain: Chair Srinivasan.....1

Absent: Commissioner Chin.....1

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated August 1, 2002, acting on Department of Buildings Application No. 301377445, reads:

“Proposed residential conversion of existing structures to residential uses within this M2-1 zoning district is contrary to ZR Section 42-00 and therefore must be referred to the Board of Standards and Appeals.”; and

WHEREAS, a public hearing was held on this application on April 15, 2003 after due notice by publication in the City Record, with continued hearings on June 17, 2003, September 9, 2003 and November 18, 2003, and then to February 3, 2004 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Vice-Chair Satish Babbar, Commissioner James Chin, Commissioner Peter Caliendo and Commissioner Joel Miele; and

WHEREAS, this is an application under Z.R. §72-21, to permit, in an M2-1 zoning district, the proposed conversion and combination of existing three-story, two-story and six-story manufacturing buildings to residential use, with 48 residential units (UG 2), which is contrary to Z.R. §42-00; and

WHEREAS, the subject zoning lot is 24,304 sq. ft., with frontage on the Gowanus Canal, as well as on North Third Street, which is a wide street; and

WHEREAS, the zoning lot is currently occupied by three vacant manufacturing buildings, which are proposed to be combined; and

WHEREAS, the applicant alleges that the following are unique physical conditions, which create

practical difficulties and unnecessary hardships in using the existing buildings or in constructing the proposed combined building in conformity with underlying district regulations: the functional obsolescence of the existing buildings for conforming use, due the massing of square footage on the upper floors of the six-story building, the unimproved floors broken up by numerous support columns, the lack of loading docks, the antiquated wiring, elevators, and mechanicals, and the insufficient ceiling heights; and

WHEREAS, the applicant has submitted supplemental documents that allegedly substantiate the claims made in support of the claim that the existing buildings are functionally obsolete; and

WHEREAS, as the applicant notes in its submission of January 20, 2004, the Board does consider the functional obsolescence of an existing building, if supported by substantial evidence, to be the basis for a claim of unique physical conditions that lead to practical difficulty or unnecessary hardship, as set forth at §72-21(a); and

WHEREAS, however, the Board notes that a claim of functional obsolescence of a building for conforming use is examined on a case by case basis, and that each case is unique - it is highly unlikely that two buildings far apart from each other geographically would exhibit the exact same degree of functional obsolescence or the same combination of physical features; and

WHEREAS, therefore, the Board finds that although the applicant has tailored its most recent submission, and specifically its representation of functional obsolescence, to be identical to a prior resolution for a Board variance, there is no merit to the applicant’s contention that the subject application is identical to any other; and

WHEREAS, the Board disagrees with the applicant’s characterization of the buildings as functionally obsolete, finding that: the subject building fronts on a wide street (Third Street), and thus it is possible to create a loading dock system that would conform to the trucking needs of a modern manufacturing use (unlike a building fronting only on a narrow street); and the floor to ceiling height on floors 1 through 4 of the 6-story building are approximately 15 feet high, which the Board finds to be adequate; and

WHEREAS, based on its review of the record and its site visit, the Board finds that the applicant has failed to provide substantial evidence that the subject lot possesses unique physical conditions that create practical difficulties and unnecessary hardships in developing the site in strict conformity with current zoning, and that the application therefore fails to meet the finding set forth at Z.R. §72-21(a); and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding

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set forth at Z.R. §72-21(a), the application also fails to meet the finding set forth at Z.R. §72-21(b); and

WHEREAS, the applicant represents that that residential use is appropriate at the site because: there is a residential zoning district diagonally to the northwest, a bike lane runs along Third Street in front of the site, and the site is adjacent to the Gowanus Canal, which the applicant alleges is now predominantly used for recreation; and

WHEREAS, the Board notes that the residential zoning district that applicant sites is diagonally across a large intersection and a wide street and, within a 400' radius of the site, consists primarily of vacant lots and lots occupied by manufacturing uses; and

WHEREAS, because of the separation between the subject site and the residential zoning district, as well as the minimal amount of residential uses in a 400' radius of the site, the Board finds that there is no real relation in terms of neighborhood character between the site and the residential zoning district; and

WHEREAS, the Board observes that the building is situated on a block occupied by only conforming uses; that the block to the north contains predominantly conforming uses, and that the blocks across the Gowanus Canal from the site contain predominantly conforming uses; and

WHEREAS, the Board notes that the proposed building would not actually face any residential district, and notes further that the east side of Bond Street, on which a small portion of the proposed building would front, is occupied predominantly by conforming manufacturing uses extending from the site due north for several blocks; and

WHEREAS, the Board finds, based on its site visit and evidence in the record, that the site is within, and relates to in terms of character, a viable M2-1 manufacturing area that extends east from Bond Street across the Gowanus Canal to approximately 3rd Avenue, with blocks occupied predominantly by conforming uses; and

WHEREAS, the Board disagrees that a bike lane creates or contributes to any alleged residential character of this particular neighborhood; rather, a bike lane, given that it is actually laid out on the street, is more analogous to a transportation lane for auto vehicles; and

WHEREAS, in support of the argument that the Gowanus Canal is now predominantly used for recreation, the applicant has submitted excerpts from

newspapers and a community board website containing anecdotes regarding alleged observed recreational use of the canal; and

WHEREAS, the Board notes that one of the articles submitted by applicant states that barges owned by the Bayside Fuel Oil Corporation continue to use the canal; and

WHEREAS, the information from the community board website, submitted by applicant, states that while overall water quality in the Gowanus Canal has improved, "the bottom of the canal is still lined with decades worth of sediment containing heavy metals, PCBs and other toxic elements"; and

WHEREAS, the Board disagrees with the applicant's assertion that the Gowanus Canal is now predominantly used for recreational use, and concludes based on evidence in the record and its own observations, that the use of the canal for such purposes is at most minimal and in its fledgling stages, and that the canal, while cleaner than in the past, remains significantly polluted; and

WHEREAS, the Board notes that even if the Gowanus Canal were to be used primarily for recreational uses in the future, it would not necessarily lead to the conclusion that the area in which the subject site is situated had become more amenable to residential conversions; and

WHEREAS, based on the a review of the submitted land use map, other data in the record, and its own site visit, the Board finds that the proposed building, if constructed, would be one of the only residential uses with a large number of units in a viable manufacturing area, and the only large residential building with frontage on the Gowanus Canal; and

WHEREAS, based on the above, the Board finds that this action, if approved, will alter the essential character of the neighborhood, and that the application therefore fails to meet the finding set forth at Z.R. §72-21(c); and

WHEREAS, because the subject application fails to meet the findings set forth at Z.R. §72-21(a), (b) & (c), it must be denied.

Resolved, the decision of the Borough Commissioner, dated August 1, 2002, acting on DOB Alt Application No. 301377445 must be sustained, and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, February 3, 2004.

A true copy of resolution adopted by the Board of Standards and Appeals, February 3, 2004.

Printed in Bulletin No. 7, Vol. 89.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.