

**252-06-BZ**

**APPLICANT** – Manat, Phelps & Phillips, LLP, for St. John’s University, owner.

**SUBJECT** – Application September 15, 2006 – Variance (§72-21) to permit a five foot encroachment in the required front setback. The proposal would convert the uses in the twelve subject buildings to community facility (dormitory Use Group 3A), an as-of-right use in the R4 zoning district. The proposal is contrary to the required front yard setback (§24-34).

**PREMISES AFFECTED** – 147-04 to 147-30 Union Turnpike, Block 6715, Lots 25-37, Borough of Queens.

**COMMUNITY BOARD #8Q**

**APPEARANCES** –

For Applicant: Carol Rosenthal.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated August 18, 2006, acting on Department of Buildings Application Nos. 402429323, 402429797, 402429788, 402429779, 402429760, 402429751, 402429742, 402429733, 402429724, 402429332, 402429341, and 402429350, reads in pertinent part:

“Proposed front yard for Community Facility development is contrary to Section 24-34 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the conversion of 12 existing three-story three-unit residential buildings from residential use (Use Group 2) to community facility use (Use Group 3A), which results in a new non-compliance as to front yard requirements and is contrary to ZR § 24-34; and

WHEREAS, a public hearing was held on this application on March 20, 2007 after due notice by publication in the *City Record*, and then to decision on April 10, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends disapproval of the application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of the application; and

WHEREAS, the Parkway Village Cooperative initially opposed the application, but the Cooperative’s Board has withdrawn its objections; and

WHEREAS, the Parkway Village Preservation Society provided testimony in opposition to the application, citing concerns that the site would be redeveloped with a building that would not be compatible with historic preservation goals; and

WHEREAS, the Parkway Village Tenants’ Association provided testimony in opposition to the

application, citing concerns about not being represented by the Cooperative Board’s decision to support the application; and

WHEREAS, the application is brought on behalf of St. John’s University (the “University”); and

WHEREAS, the site is located on a superblock which was created in 1983 and measures approximately 1,606,574 sq. ft. (36.88 acres) and is within an R4 zoning district; and

WHEREAS, the subject zoning lot includes the 12 referenced tax lots (the “University Site”) and is located at the north side of the block with frontage on Union Turnpike, between Main Street and 150<sup>th</sup> Street; and

WHEREAS, the majority of the zoning lot is occupied by the 34-acre Parkway Village housing cooperative of approximately 109 separate buildings; there are 16 additional tax lots (the “Sixteen Lots”) located at the intersection of Goethals Avenue and Parsons Boulevard, on the easternmost edge of the zoning lot; and

WHEREAS, as per the Rules of Practice and Procedure, the applicant endeavored to secure consent from all of the individual owners on the common zoning lot prior to submitting the subject application; and

WHEREAS, the applicant received consent from the Park Village Cooperative; and

WHEREAS, however, the applicant was unable to secure consent from the owners of the Sixteen Lots; and

WHEREAS, the applicant provided evidence documenting the efforts to obtain consent from the owners of the Sixteen Lots; the efforts resulted in one response in objection to the application; and

WHEREAS, the applicant represents that a Declaration of Restrictions, dated July 28, 1983, was executed when Parkway Village was completed, which requires that all successors and assigns of the zoning lot shall cooperate in the development of what is now the University Site; and

WHEREAS, accordingly, the applicant requests a waiver of the Rules of Practice and Procedure to permit the application without consent from each owner on the zoning lot; and

WHEREAS, the Board reviewed the evidence detailing the efforts to reach the owners of the Sixteen Lots; and

WHEREAS, the Board notes that the Sixteen Lots are the equivalent distance of four blocks away from the University Site and do not share street frontage with it; the waiver affects only the Union Turnpike frontage; and

WHEREAS, based upon the evidence submitted, the Board finds a waiver of the Rules of Practice and Procedure is appropriate and accepts the application on behalf of the University, with the consent of Parkway Village but not the owners of the Sixteen Lots; and

WHEREAS, the University Site has a lot area of 25,309.8 sq. ft.; and

WHEREAS, the site is occupied by 12 attached three-story three-family dwellings divided into two groups of six attached buildings; and

WHEREAS, the total floor area for the 12 buildings is 42,596.54 sq. ft., which amounts to approximately 1.7

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FAR on the University Site and 0.026 FAR on the zoning lot; the combined FAR of all residential development on the zoning lot is 0.499 FAR (0.75 FAR is the maximum permitted for residential use); and

WHEREAS, the buildings are currently used by the University for residential use (Use Group 2); and

WHEREAS, the applicant proposes to maintain the existing buildings' envelope, but to convert the buildings to community facility use to be used by the University as a dormitory (Use Group 2A); and

WHEREAS, the applicant proposes to maintain the existing floor area, but to convert all 42,596 sq. ft. from residential to community facility use; and

WHEREAS, the result of this conversion, which will not have any effect on the total amount of floor area on the University Site or the zoning lot, will be a community facility FAR of 0.026 and a residential FAR of 0.47 on the zoning lot; the maximum permitted community facility and total FAR is 2.0; and

WHEREAS, all of the apartments are generous in size, ranging from 1,132.9 sq. ft. to 1,210 sq. ft. for one, two, and three bedrooms; and

WHEREAS, the applicant proposes to increase the occupancy of each apartment in order to accommodate more students; and

WHEREAS, however, under the Housing Maintenance Code, the residential occupancy of the apartments is limited to three un-related occupants per dwelling, but the community facility use regulations permit an increased occupancy of individuals who are not related to each other; and

WHEREAS, accordingly, the applicant proposes to convert the use of all of the buildings to University dormitory use in order to better accommodate its housing demand; and

WHEREAS, although more floor area is permitted for a community facility use than for a residential use within the R4 zoning district, a 15-ft. front yard is required for the community facility use and only a ten ft. front yard, like the existing one which will be maintained, is permitted for residential uses; and

WHEREAS, accordingly, the applicant seeks a variance to permit a community facility use without the required 15-ft. front yard; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the shallow depth of the University Site and (2) the existing buildings onsite; and

WHEREAS, as to site's dimensions, the University Site is 71.75 feet deep with a width of 352.75 feet; and

WHEREAS, further, the applicant represents that the shallow depth does not permit much flexibility in where to situate the buildings on the site while still allowing for efficient residential floor plates; and

WHEREAS, the applicant represents that it would be infeasible to set the buildings further back on the site and still provide the required parking (30 spaces and 36 are provided), access to the buildings, and access to the remainder of the zoning lot from Union Turnpike; and

WHEREAS, as to the existing conditions of the superblock, the applicant states that the property is surrounded on three sides by Parkway Village, a large scale development situated around a central unmapped street; and

WHEREAS, the applicant represents that setting the University buildings back on the site would be less compatible with these adjacent uses; and

WHEREAS, the applicant represents that the proposed use at the site would not be feasible if the existing buildings could not be re-used and the 15-ft. front yard were required; and

WHEREAS, in addition, the applicant represents that the variance request is necessitated by the University's programmatic needs; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the University, which necessitate the requested waivers: (1) a significant increase in attendance; (2) a need to provide student housing for students drawn from outside the immediate area; and (3) a need to remain competitive by providing affordable student housing with easy access to campus facilities; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the site, when considered in conjunction with the programmatic needs of the University, create unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, since the University is a non-profit educational institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant represents that the site fronts on Union Turnpike, a wide six-lane street with a median; and

WHEREAS, the applicant represents that directly across the street is a C1-2 zoning district, which includes a gas station, several restaurants, and other businesses; and

WHEREAS, as noted, the adjacent site at the rear is developed with one and two-story residential buildings comprising the 685-unit cooperative Parkway Village; and

WHEREAS, the applicant represents that the current occupancy of the University buildings is 108 and that the projected occupancy will be approximately 162; and

WHEREAS, the applicant notes that the existing 36 dwelling units could house 36 families with no limitation on the number of occupants; and

WHEREAS, thus, the applicant asserts that the proposed use may actually result in fewer occupants than what is permitted as of right; and

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WHEREAS, the applicant represents that the population density of Parkway Village is comparable to what is proposed; and

WHEREAS, the Board notes that the applicant does not propose any new construction and therefore the use change will not alter the appearance of the existing buildings and their compatibility with the surrounding area; and

WHEREAS, additionally, the Board notes that the maintenance of the ten-ft. front yard, which complies with zoning district regulations for one use, but not for the proposed use, will not have a tangible impact on nearby uses; and

WHEREAS, accordingly, 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 applicant states that the hardship was not self-created; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waiver is the minimum necessary to accommodate the current and projected needs of the University; and

WHEREAS, the applicant represents that although more floor area is available for a community facility use on the University Site, the buildings will be maintained so as to minimize impact on nearby uses; and

WHEREAS, the Board notes that the increased number of occupants is the minimum necessary to accommodate the University's programmatic needs at the site; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the University to fulfill its programmatic needs; and

WHEREAS, 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 II action pursuant to Sections 617.6(h) and 617.12 of 6 NYCRR; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination, 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 application under ZR § 72-21, to permit, within an R4 zoning district, the conversion of 12 existing three-story three-unit residential buildings from residential use (Use Group 2) to

community facility use (Use Group 3A), which results in a new non-compliance as to front yard requirements and is contrary to ZR § 24-34, *on condition* that the use and occupancy shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 9, 2007"- (17) sheets and "Received March 8, 2007"- (1) sheet; and *on further condition*:

THAT any change in the use or ownership of the buildings shall be approved by the Board;

THAT the total floor area of the buildings on tax lots 25-37 shall not exceed 42,596 sq. ft. (0.026 FAR on the zoning lot), as illustrated on the BSA-approved plans;

THAT the use and occupancy of the buildings shall be as per Department of Buildings approval;

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, April 10, 2007.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 10, 2007.**

**Printed in Bulletin Nos. 14-15, Vol. 92.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**