

252-09-A

APPLICANT – Marc A. Chiffert, P.E., for Gani Realty Corporation, owner.

SUBJECT – Application September 9, 2009 – Appeal challenging the NYC Fire Department determination that construction of a proposed building on a private street does not provide proper fire access for emergency vehicles. R8 zoning district.

PREMISES AFFECTED – 2788 Grand Concourse Boulevard, between Miriam Street and East 197th Street, Block 3304, Lot 103 & 171, Borough of Bronx.

COMMUNITY BOARD #15BX

APPEARANCES – None.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, this appeal arises in response to a final determination from the Chief of Department, dated August 4, 2009 (the “Final Determination”), issued in response to a request that the Fire Department reconsider a determination that the subject site does not provide a fire apparatus access road with an unobstructed width of not less than 38 feet, as required by Fire Code (FC) § 503.2.1; and

WHEREAS, the Final Determination reads in pertinent part:

“The Fire Code (FC), at Section 503.2.1, requires a fire apparatus access road with an unobstructed width of thirty-eight feet (38’) to the frontage space of a building that does not directly front on a public street...The proposed development does not directly front on the Grand Concourse, and is not accessible for firefighting operations from the public street. Accordingly a fire apparatus road must be provided to a frontage space in the interior of the block;” and

WHEREAS, this appeal seeks to reverse a determination by the Fire Department that a proposed residential building does not provide the required fire access road for Fire Department emergency vehicles; and

WHEREAS, a public hearing was held on this appeal on February 2, 2010, after due notice by publication in *The City Record*, and then to decision on March 9, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the Fire Department provided testimony in opposition to the application; and

WHEREAS, the subject site is located on the block bound by East 197th Street, Miriam Street, the Grand Concourse, and Valentine Avenue, within an R8 zoning

district; and

WHEREAS, the subject site is L-shaped and consists of two tax lots, Lot 103 and Lot 171, to be merged into a single zoning lot meeting at the interior of the block; and

WHEREAS, Lot 103 has frontage on the Grand Concourse and Lot 171 has 30 feet of frontage on East 197th Street; a five-story, 62-unit residential building occupies the portion of Lot 103, which abuts the Grand Concourse to a depth of approximately 140 feet (the “Existing Building”); and

WHEREAS, the applicant proposes to construct a 14-story 51-unit residential building (the “Proposed Building”) on the interior of the site, 30 feet behind the Existing Building (and approximately 170 feet from the Grand Concourse), with pedestrian access through the lobby of the Existing Building and vehicle access by a 30-ft. wide by 90-ft. deep private road accessed from the East 197th Street frontage; and

WHEREAS, the Fire Department has two primary concerns: (1) the Proposed Building does not have frontage on the Grand Concourse, such that it may be accessed for fire protection; and (2) accordingly, a fire apparatus access road with a minimum width of 38 feet is required to access the frontage space adjacent to the Proposed Building’s entrance at East 197th Street; and

WHEREAS, as to the frontage question, the applicant asserts that the Proposed Building will front on both the Grand Concourse and East 197th Street because it can be accessed both through the Existing Building on the Grand Concourse and through a private road at East 197th Street; and

WHEREAS, the Fire Department contends that the Proposed Building would not front on the Grand Concourse because it would be separated from the Grand Concourse by the Existing Building and a distance of approximately 170 feet; and

WHEREAS, the Fire Department notes that, although the applicant proposes access through the Existing Building, it and the Proposed Building will remain separate buildings, by definition and a distance of approximately 30 feet; and

WHEREAS, the Fire Department states that although the Proposed Building can be accessed on foot by entering and walking through the Existing Building, that route only provides access to the second floor lobby and firefighters would not be able to enter the upper floors of the Proposed Building by means of the elevators or stairwells of the Existing Building, and accessing the roof of the five-story Existing Building by means of fire apparatus access ladders would not enable firefighters to access the 14-story Proposed Building 30 feet away; and

WHEREAS, accordingly, the Fire Department contends that the general pedestrian access through the Existing Building is not sufficient for fire apparatus access, thus the fire apparatus would be required to

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access the Proposed Building and its main entrance from the private road at the East 197th Street frontage at the interior of the site; and

WHEREAS, the Board agrees that the Proposed Building is a separate building that does not have frontage along the Grand Concourse, for Fire Department access purposes; and

WHEREAS, the Fire Department argues that the site also does not front on East 197th Street because the building is located approximately 120 feet beyond the street line, and once a building is beyond 30 feet from the street line it ceases to be considered fronting upon a public street and must be accessed by a fire apparatus access road; and

WHEREAS, the Fire Department contends that since the Proposed Building, which is proposed to be set back approximately 140 feet from the Grand Concourse and approximately 120 feet from East 197th Street, does not directly front on a public street, the following two requirements must be met: (1) a fire apparatus access road with an unobstructed width of 38 feet, as set forth in FC § 503.2.1, be provided from the street to the building's frontage space and (2) a frontage space with a width and depth of 30 feet be provided within 30 feet of the main front entrance to the building; and

WHEREAS, as to the requirement for a fire apparatus access road, the applicant agrees that one is required, but asserts that the one it proposes from East 197th Street, with a width of 30 feet (limited by the maximum width of Lot 171), satisfies the requirement; and

WHEREAS, the applicant makes two primary arguments: (1) that the Board should waive the requirement that the fire apparatus access road have a minimum width of 30 feet, because the 30-ft. width of the private road provides sufficient access for fire apparatus and the Proposed Building design provides additional fire safety measures that will enhance the building's fire safety to compensate for any deficiency in the access road's width; and (2) that the proposed road with a width of 30 feet fits within an exception, which permits the reduction in the width of the access road from 38 feet to 30 feet; and

WHEREAS, the applicant states that the road will be maintained as an unobstructed access way for fire apparatus because it will be marked as a fire lane, there will be no sidewalks installed, and a center curb cut which is low enough for fire trucks to straddle will be installed with "in" and "out" lanes that would prevent parking along the length of the private road; and

WHEREAS, the applicant asserts that, since the width of 30 feet will be maintained as an unobstructed access way it will meet the intent of the fire apparatus access road requirement; and

WHEREAS, the applicant claims that it will implement enhancements to the Proposed Building's fire safety, including sprinklering the entire building, providing a corridor with a width of three feet and a

passageway with a width of six feet from the existing building on the Grand Concourse as a special access for firefighting purposes, installing a fire hydrant on the site, equipping the proposed building with a fire standpipe, and installing a Siamese connection from the Grand Concourse; and

WHEREAS, the Fire Department states that the road with a width of 30 feet and a depth of 90 feet from East 197th Street, is in the appropriate location for a fire apparatus access road required by FC § 503.2.1, however its width is deficient by eight feet and, thus, it is non-compliant; and

WHEREAS, the Fire Department states that certain of the applicant's proposed fire safety measures are required regardless of whether a fire apparatus access road is provided and the proposed measures are not viable alternative fire safety measures to providing access for emergency vehicles; and

WHEREAS, specifically, the Fire Department states that the building is required to be sprinklered pursuant to the Fire Code, the proposed passageway from the existing building would only be suitable for pedestrian access rather than emergency services, and the proposed fire hydrant would be located in the required frontage space and would prevent other fire apparatus from accessing the site; and

WHEREAS, the Fire Department notes that the proposal is for a 14-story 51-unit building, and proper fire apparatus access is required to position equipment to reach the upper floors of the building, which would be set back approximately 120 feet from its access point on East 197th Street; and

WHEREAS, as to the exceptions, the applicant cites to FC § 503.2.1, which sets forth three exceptions to the requirement that a fire apparatus access road have a minimum width of 38 feet; and

WHEREAS, the applicant contends that the proposal falls within an exception under FC § 503.2.1 that permits a fire apparatus access road with a minimum width of 30 feet, if it provides access to not more than five dwelling units, and all buildings to which the private road provides access are protected throughout by a sprinkler system; and

WHEREAS, the Board notes that although the proposed fire apparatus access road would have a width of 30 feet and the proposed building would be protected throughout by a sprinkler system, the applicant does not satisfy the noted exception because the Proposed Building, with 51 units, far exceeds the density limit of five units; and

WHEREAS, the Fire Department notes that the Proposed Building does not fit within any of the other exceptions to the fire apparatus access road requirements; and

WHEREAS, the Board finds that the applicant

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failed to provide any compelling argument or evidence that it falls within any of the exceptions; and

WHEREAS, in addition to its primary concerns regarding the fire apparatus access road, the Fire Department raised concerns that the frontage space was constrained and a portion of the required turnaround located underneath the Proposed Building is occupied by columns and parking spaces such that it would impede the ability for fire apparatus, with lengths of 30 feet to 55 feet, to utilize the turnaround, and is thus not a viable access route; and

WHEREAS, the Fire Department notes that under FC § 104.8, it has authority to modify provisions of the Fire Code for reasons of impracticability, but that due to the fire safety concerns triggered by the inaccessibility of the Proposed Building, granting a modification to approve a substandard roadway as the only means for fire apparatus to access the building would not be consistent with the interests of public safety; and

WHEREAS, the applicant requested that the Board grant its appeal on the condition that the Fire Department approves a site plan; and

WHEREAS, the Board notes that there is no legal basis to overturn the Fire Department's determination and the applicant has failed to provide a basis for waiving the Fire Code pursuant to Section 666(6) of the New York City Charter; and

WHEREAS, the Board further notes that action by the Board is not necessary in order for the applicant to continue working with the Fire Department to pursue Fire Code waivers based on alternative plans; and

WHEREAS, based on the evidence in the record, the Board concurs with the Fire Department that the proposal does not satisfy the requirements for a fire apparatus access road with a width of 38 feet, as set forth in FC § 503.2.1.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Fire Department decision dated August 4, 2009, is hereby denied.

Adopted by the Board of Standards and Appeals, March 9, 2010.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 9, 2010.
Printed in Bulletin No. 11, Vol. 95.**

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**