

257-04-BZ

CEQR #05-BSA-009K

APPLICANT - Patrick W. Jones, Petraro & Jones, LLP, for Boerum Place, LLC, owner.

SUBJECT - Application November 19, 2004 - under Z.R.§72-21, to permit the proposed construction of an eight story mixed-use, retail-residential building, located in an R6A, R6, C2-4 and C2-3 zoning districts which does not comply with the zoning requirements for floor area ratio, lot coverage, building height and loading berth, is contrary to Z.R. §23-145, §33-121, §23-633, §35-25 and §36-22.

PREMISES AFFECTED - 252/60 Atlantic Avenue (a/k/a 83/87 Boerum Place; 239/47 Pacific Street), east side of Boerum Place, between Atlantic Avenue and Pacific Street, Block 181, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES -

For Applicant: Patrick Jones.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 8, 2004, acting on Department of Buildings Application No. 301763143, reads, in pertinent part:

"Objection #1 - The proposed floor area ratio exceeds that permitted by ZR 23-145 & 33-121.

Objection #2 - The proposed lot coverage exceeds that permitted by ZR 23-145.

Objection #5 - The proposed loading berth does not comply with that required by ZR 36-62."; and

WHEREAS, a public hearing was held on this application on April 19, 2005 after due notice by publication in the City Record, with continued hearings on May 24, 2005, June 14, 2005, July 19, 2005, and then to decision on August 23, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioners Miele and Chin; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the Atlantic Avenue Betterment Association also supports this application; and

WHEREAS, this is an application under Z.R. §72-21, to permit, within a split C2-4 (within an R6A zoning district) and C2-3 in the Special Downtown Brooklyn District and the Atlantic Avenue Subdistrict (within an R6 zoning district), the proposed development of a seven-story mixed-use building, which does not comply with the zoning

regulations for lot coverage, floor area, and loading berths, contrary to Z.R. §§ 23-145, 33-121 and 36-62; and

WHEREAS, the premises is approximately 85'-0" by 160'-0", and is located on the east side of Boerum Place between Atlantic Avenue and Pacific Street; the total lot area is approximately 16,225 sq. ft.; and

WHEREAS, the site is currently improved upon with a pre-existing, non-conforming automotive service station; and

WHEREAS, the applicant proposes to construct a seven-story building, with approximately 74,672 sq. ft. of residential floor area, 8,534 sq. ft. of retail floor area, 81,079 sq. ft. total zoning floor area, 4.997 floor area ratio ("FAR"), 59 dwelling units, a street wall height of 50'-0" and a total height of 70'-0" on Atlantic Avenue, a street wall height of 60'-0" and a total height of 70'-0" on the northern portion of Boerum Place, a street wall height of 40'-6" and a total height of 50'-0" on the southern portion of Boerum Place and along Pacific Street, and 24 parking spaces; and

WHEREAS, the original proposal contemplated an eight-story building with 83,030 sq. ft. of residential floor area, 14,160 sq. ft. of retail floor area, 97,190 sq. ft. total zoning floor area, 5.99 FAR, 64 dwelling units, a street wall height of 50'-0" and a total height of 80'-0" on Atlantic Avenue, a street wall height of 60'-0" and a total height of 80'-0" on the northern portion of Boerum Place, a street wall height of 40'-6" and a total height of 80'-0" on the southern portion of Boerum Place and Pacific Street, 36 parking spaces, and other non-compliances as discussed below; and

WHEREAS, the initial proposal also included waivers for building height and off-street parking; such non-compliances were subsequently removed by the applicant at the request of the Board; and

WHEREAS, the proposed development generates the following waiver requests: FAR of 4.997 (maximum 2.69 FAR permitted); lot coverage ratio of 0.89 (maximum of 0.80 permitted); and no loading berth (one loading berth required); 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 compliance with underlying district regulations: the presence of an underground storage tank and environmental contamination, due to the history of use as a gas station; and

WHEREAS, the applicant represents that there is an underground storage tank on the premises that was installed in 1987, and the tank is not currently in compliance with regulations of the Environmental Protection Agency (EPA); and

WHEREAS, the applicant has submitted a

257-04-BZ

CEQR #05-BSA-009K

letter from the prior lessee of the property, ExxonMobil, which states that the underground storage tanks and gasoline product lines need to be replaced as per EPA regulations, and the cost of such work is \$300,000; and

WHEREAS, the applicant has submitted a letter from an environmental remediation firm, dated May 27, 2005, which states that remediation of the site is expected to cost at least \$1,400,000, and that approximately 20% of the remediation work has been completed already; and

WHEREAS, based upon the above, the Board concludes that the increased FAR is justified by the premium costs related to environmental contamination remediation; and

WHEREAS, the Board also observes that the lot coverage waiver is justified due to the short length of the frontage on Boerum Place (160'-0" instead of the typical 200'-0"); and

WHEREAS, specifically, the Board notes that the creation of viable, efficient floor plates with double-loaded corridors for a contextual building form that would comply with the R6A envelope, as well as the Quality Housing envelope within the R6 district, necessitates a higher lot coverage ratio than would be required on a lot with a typical full block frontage of 200 ft.; and

WHEREAS, finally, the Board notes that the loading berth requirement arises from the amount of square footage of the proposed first floor retail space; while this objection would not arise if the proposal included residential over a larger portion of the ground floor, such use is not as viable as retail on the Atlantic Avenue side of the site, as well as along Boerum Place, and its inclusion there would decrease the overall return and likely necessitate the increase of other waivers; and

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

WHEREAS, the applicant represents that it has unsuccessfully attempted to find other vendors to operate the gas station, but other operators refused as the volume of gasoline sales was insufficient to overcome the cost of the work to extensively retrofit the underground storage tanks system; and

WHEREAS, the applicant submitted an initial feasibility study that analyzed an as-of-right complying residential/retail scenario and a lesser non-complying residential/retail scenario, and concluded that neither would result in a reasonable rate of return; and

WHEREAS, the applicant concluded in its feasibility study that the additional premium costs for remediation would not be offset by an as-of-right mixed use commercial and residential development at

2.67 FAR; and

WHEREAS, at the request of the Board, the applicant submitted a further feasibility study of a 4.0 FAR building with residential and retail, and concluded that it would not result in a reasonable rate of return; and

WHEREAS, the Board questioned certain of the applicant's comparables related to the site valuation and condominium sales for this location, and asked the applicant to update and provide additional information about them; and

WHEREAS, the applicant responded by updating the comparables and site valuation, and by providing both a detailed description of the amenities of the comparables used and an explanation as to why the proposed building will sell for less than the comparables; and

WHEREAS, as to the residential retail and condominium schemes, the Board questioned the applicant's use of a sell-out period of three years rather than a shorter period; and

WHEREAS, in response, the applicant submitted additional information reinforcing why a sell-out period of three years is appropriate, including examples of other new residential condominiums within the Downtown Brooklyn and Boerum Hill neighborhoods; and

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

WHEREAS, the applicant states that the proposed building's current bulk and height will not negatively affect the character of the neighborhood nor impact adjacent uses; and

WHEREAS, the applicant represents that the site is located on the heavily trafficked intersection of Atlantic Avenue and Boerum Place; and

WHEREAS, the Board observes that Atlantic Avenue is a major thoroughfare in Downtown Brooklyn and is also a wide street, and the portion of the site located on Atlantic Avenue is a high density residential district (R6A) with a commercial overlay; and

WHEREAS, the Board also notes that Boerum Place is a narrow street with lower buildings and is in an R6 zoning district with a commercial overlay; and

WHEREAS, the Board further notes that Pacific Street is also a narrow street and is predominantly residential, with four to five story buildings; and

WHEREAS, the applicant further represents that north of Atlantic Avenue the area is characterized by buildings of ten stories or more, and south of Atlantic Avenue, the neighborhood is characterized by buildings between two and eight

257-04-BZ
CEQR #05-BSA-009K

stories; and

WHEREAS, the Board observes that the initial proposal was significantly over bulk at a height of eight stories, and was particularly out of character with the neighborhood along the portions of Boerum Place and Pacific Street; and

WHEREAS, as noted above, the Board found that the initial financial information presented by the applicant did not justify the FAR first requested, the additional commercial floor area that triggered the loading berth waiver, or the increased parking (given that the site is served by mass transit); and

WHEREAS, accordingly, in response to the Board's concerns, the applicant reduced the overall bulk of the building and further complied with the Quality Housing envelope and setback regulations, in order to create a more contextual development; and

WHEREAS, specifically, on Atlantic Avenue and the northern portion of Boerum Place, the applicant initially proposed a building with the following bulk parameters: a 50'-0" street wall height, then a setback of 10'-0" to a height of 60'-0", and a further setback of 10'-0" to a total height of 80'-0"; and

WHEREAS, as-of-right, the zoning allows a street wall height of 50'-0", then a setback of 10'-0" to a height of 60'-0", and then a further setback of 10'-0" to a height of 70'-0"; and

WHEREAS, the applicant now proposes a 50'-0" street wall height, then a setback of 10'-0" to a height of 70'-0"; and

WHEREAS, on Boerum Place, the applicant proposed a 60'-0" street wall height, then a setback of 15'-0" to a height of 80'-0"; and

WHEREAS, as-of-right, the zoning allows a street wall height of 60'-0", then a setback of 15'-0" to a height of 70'-0"; and

WHEREAS, the applicant now proposes a 60'-0" street wall height on Boerum Place, then a setback of 10'-0" to a height of 70'-0"; and

WHEREAS, on Boerum Place/Pacific Street, the applicant proposed a street wall height of 40'-6", then a setback of 15'-0" to a height of 80'-0"; and

WHEREAS, as-of-right, the zoning allows a street wall height of 45'-0", then a setback of 15'-0" to a height of 50'-0"; and

WHEREAS, the applicant now proposes a street wall height of 40'-6", then a setback of 15'-0" to a height of 50'-0"; and

WHEREAS, the Board observes that the due to these changes, the proposed building complies with all street wall and setback requirements; and

WHEREAS, additionally, the Board notes that although the current proposal still requires a loading berth waiver, the applicant significantly reduced the amount of retail floor area along the southern portion of Boerum Place and Pacific Street from 11,203 sq. ft. to 8,534 sq. ft.; and

WHEREAS, the Board further notes that the applicant reduced the number of parking spaces from 36 to 24, thereby removing the parking objection; and

WHEREAS, the Board finds that these modifications to the proposal lead to a development that is more compatible with the context of the surrounding neighborhood; and

WHEREAS, the applicant also represents that the proposal complies with all applicable requirements of the Special Downtown Brooklyn District and the Atlantic Avenue Subdistrict; 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, although the applicant modified the proposal from the original version to the current scenario, the Board requested a further investigation of the feasibility of a 4.0 FAR development scenario with a shorter sell-out period; and

WHEREAS, the applicant reviewed such a scenario and concluded that three years is an appropriate sell-out period based on recent sales in the areas, and that a 4.0 FAR building is not viable; and

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

WHEREAS, therefore, 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 a 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. 05BSA009K, dated October 26, 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; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts and Public Health; and

WHEREAS, the Office of Environmental

257-04-BZ

CEQR #05-BSA-009K

Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the Applicant: (1) an Environmental Assessment Statement Form, dated October 26, 2004; (2) a Phase I Environmental Site Assessment Report, dated June 24, 2003; and (3) the Limited Phase II Subsurface Investigation & Partial Remediation Report dated February 11, 2004; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a Proof of Submission for Recording of an Executed Restrictive Declaration was submitted to BSA and DEP on August 22, 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

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 a split C2-4 (within an R6A zoning district) and C2-3 in the Special Downtown Brooklyn District and the Atlantic Avenue Subdistrict (within an R6 zoning district), the proposed development of a seven-story mixed-use building, which does not comply with the zoning regulations for lot coverage, floor area, and loading berths, contrary to Z.R. §§23-145, 33-121 and 36-62; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 1, 2005"-(14) sheets; and on further condition:

THAT the bulk parameters of the proposed building shall be as follows: (1) FAR of 4.997; and

(2) lot coverage ratio of 0.89;

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, August 23, 2005.

A true copy of resolution adopted by the Board of Standards and Appeals, August 23, 2005.

Printed in Bulletin No. 36, Vol. 90.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.