

**262-12-BZ**

**CEQR #13-BSA-028Q**

APPLICANT – Patrick W. Jones, P.C., for Canyon & Cie LLC c/o Mileson Corporation, owner; Risingsam Management LLC, lessee.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit a hotel (UG 5), contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 132-10 149th Avenue aka 132-35 132<sup>nd</sup> Street, bounded by 132nd Street, 149th Avenue and Nassau Expressway Service Road, Block 11886, Lot 12 and 21, Borough of Queens.

**COMMUNITY BOARD #10Q**

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

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez...4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

WHEREAS, the decision of the Queens Borough Commissioner, dated August 6, 2012 acting on Department of Buildings Application No. 420571189, reads in pertinent part:

Use Group 5 (hotel) is not permitted in M2-1 zoning district, per ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M2-1 zoning district, the construction of a four-story building to be occupied as a transient hotel (Use Group 5) with 101 rooms, and an accessory parking lot with six spaces, which does not conform with the use regulations pursuant to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 26, 2013, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 10, Queens, recommends disapproval of the application, asserting that the essential character of the neighborhood is residential and industrial and that the applicant failed to demonstrate that an as-of-right use does not provide a reasonable return; and

WHEREAS, the subject site is a triangular block bounded by 132nd Street, 149th Avenue, and 150th Avenue (a/k/a the Nassau Expressway Service Road) and comprising Tax Lots 12 and 21, within an M2-1 zoning district; and

WHEREAS, the site has 132.16 feet of frontage along 132nd Street, 216.1 feet of frontage along 149th Avenue, 254.9 feet of frontage along the Nassau Expressway Service Road, and 14,280.05 sq. ft. of lot area; and

WHEREAS, the applicant states that, at present, the site is used as a parking lot for shuttle vans operated by the nearby Hilton Garden Inn; and

WHEREAS, the applicant notes that, historically, the site was part of a larger tract of land that contained a sewage treatment facility; the applicant also notes that the Board previously denied bulk variances (maximum building height within two miles of an airport) pursuant to the 1916 Zoning Resolution under BSA Cal. Nos. 1907-61-BZ and 1928-61-BZ; and

WHEREAS, the applicant proposes to construct a four-story hotel (Use Group 5) with a wall height of 45'-6", 28,533 sq. ft. of floor area (2.0 FAR) and 101 rooms; the applicant notes that the maximum FAR for uses permitted as-of-right in the subject M2-1 district (and in the adjacent M1-2 district) is 2.0; and

WHEREAS, because Use Group 5 is not permitted as-of-right in the subject M2-1 district, the applicant seeks a use variance; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: (1) the site's triangular shape; and (2) contamination of the soil with hazardous materials; and

WHEREAS, the applicant states that the triangular shape of the site is a unique physical condition that impairs its ability to develop the site for a conforming use; and

WHEREAS, the applicant states that, based on historical Sanborn maps, the triangular shape of the site results from the construction of the Nassau Expressway in the 1960s, which formed the triangular site's hypotenuse and separated the site from its historic block; and

WHEREAS, as to the uniqueness of the triangular shape, the applicant states that there is only one other triangular lot (Block 11900, Lot 75) in the study area (the area bounded by 130th Street, 130th Place, the Belt Parkway, the Nassau Expressway, and 134th Street); however, the applicant states Block 11900, Lot 75 is distinguishable because it is more than three times the size of the subject site (53,125 sq. ft. of lot area versus 14,280.05 sq. ft. of lot area); and

WHEREAS, as to the hardship created by the triangular shape, the applicant states that the lot shape results in two equally undesirable as-of-right scenarios: (1) a triangular manufacturing building; and (2) a rectangular manufacturing building; and

WHEREAS, the applicant states that a triangular building is inherently inefficient due to its acute angles, which form sharp corners that are unsuitable for manufacturing uses; the applicant notes that manufacturing and commercial buildings are nearly universally rectangular in shape in order to accommodate shelving, boxes, office space, and other standard-sized machinery and equipment that cannot be

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easily modified; and

WHEREAS, the applicant states that constructing a rectangular building with sufficient floor space would require constructing multiple floors with vertical transportation; the applicant asserts that constructing vertical transportation is both expensive and generally undesirable for modern manufacturers, which prefer to have operations at ground level; and

WHEREAS, as to the contamination, the applicant states that a Phase II site investigation revealed the presence of certain volatile organic compounds, semi-volatile organic compounds, metals, and pesticides, owing to the historical use of the site as a sewage treatment facility; and

WHEREAS, the applicant states that remediation of these contaminants will require soil disposal, clean fill replacement, and the creation of a vapor barrier, at significant cost; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant assessed the financial feasibility of four scenarios: (1) an as-of-right triangular manufacturing building with two stories, 28,501 sq. ft. of floor area (2.0 FAR), and a floorplate of 14,560 sq. ft.; (2) an as-of-right rectangular manufacturing building with four stories, 28,485 sq. ft. of floor area (1.99 FAR), and a floorplate of 7,700 sq. ft.; (3) an as-of-right rectangular manufacturing building on a conceptual rectangular lot with two stories, 28,479 (1.99 FAR), and a floorplate of 14,540 sq. ft.; and (4) the proposal; and

WHEREAS, the applicant concluded that, other than the scenario involving the conceptual rectangular lot, only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the calculation of costs associated with the excavation of the contaminated soil and to explain why the nearby hotels were not included as comparators for the applicant's financial analysis; and

WHEREAS, in response, the applicant submitted a revised financial analysis delineating excavation costs; as to the hotels used as comparators, the applicant explained that the nearby hotels (the Sheraton and the Hilton Garden Inn) offer more amenities than the proposed hotel, and, as such, command higher rates and are not comparable to the proposal; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use 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, the applicant represents that although the site is designated as an Industrial Business Zone, the immediate area is characterized by a mix of commercial, community facility, and industrial uses, and major thoroughfares including the Belt Parkway, South Conduit Avenue, and the Nassau and Van Wyck Expressways; and

WHEREAS, the applicant represents that there are two other hotels within 400 feet of the site and that there are 18 hotels within the greater area surrounding John F. Kennedy International Airport, which lies to the south and east of the site; and

WHEREAS, as for the immediately adjacent sites, the applicant states that a homeless shelter ("Skyway Family Center"), a Sheraton hotel, and a Hilton Garden Inn occupy the block immediately north of the site, a highway salt storage area (covered by a tarpaulin) occupies the block immediately to the south of the site; to the west of the site are a catering facility and a rental car facility; and

WHEREAS, the applicant notes that the site is within the only portion of the subject M3-1 district that is north and west of the Nassau Expressway, and that immediately north and west of the site is an M1-2 district, where less intense manufacturing uses predominate and where the proposed hotel would be permitted as-of-right; and

WHEREAS, according to the original design, the main entrance for the hotel was to be located on the 149th Avenue frontage; and

WHEREAS, in response to the Community Board's concerns about the compatibility of the entrance with the Skyway Family Center, the applicant revised the design so that the main entrance of the hotel is located on the 150th Avenue frontage; and

WHEREAS, as to bulk, the applicant states, as noted above, that the proposal complies with the maximum 2.0 FAR permitted in the subject M2-1 district, as well as all other bulk regulations; and

WHEREAS, accordingly, the Board finds that this action will neither 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 practical difficulties and unnecessary hardships associated with the site result from its triangular shape (as created by the building of the Nassau Expressway) and its contamination, whose source is indeterminable; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical

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characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and 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 ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.2 and 617.6 of 6NYCRR; 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. 13BSA028Q, dated January 6, 2014; 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 New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the September 2013 Remedial Action Plan and the site-specific Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; 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; and

*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

**A true copy of resolution adopted by the Board of Standards and Appeals, January 14, 2014.**

**Printed in Bulletin Nos. 1-3, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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 under ZR § 72-21 and grants a variance, to permit, on a site within an M2-1 zoning district, the construction of a four-story building to be occupied as a transient hotel (Use Group 5) with 101 rooms, and an accessory parking lot with six spaces, which does not conform with the use regulations pursuant to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 13, 2013" – (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the Proposed Building: four stories, a wall height of 45'-6", 28,533.46 sq. ft. of floor area (2.0 FAR), a maximum of 101 hotel rooms, and six parking spaces;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT this grant is contingent upon final approval from the Department of Environmental Protection before issuance of construction permits other than permits needed for soil remediation; and

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT DOB 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, January 14, 2014.

