

297-06-BZ

APPLICANT – Glen V. Cutrona, AIA, for John Massamillo, owner.

SUBJECT – Application November 13, 2006 – Variance under (§72-21) to allow a proposed four (4) story residential building with ground and cellar level retail use to violate applicable lot coverage (§23-145) and rear yard requirements (§23-47). C4-2 district (Special Hillside Preservation District); building is located within the bed of a mapped street, contrary to GCL § 35.

PREMISES AFFECTED – 130 Montgomery Avenue, between Victory Boulevard and Fort Place, Block 17, Lot 116, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Glen V. Cutrona.

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 Staten Island Borough Commissioner, dated November 6, 2006, acting on Department of Buildings Application No. 50085452, reads, in pertinent part:

“Construction is proposed in the bed of a final mapped street contrary to Article III Section 35 of the General City Law. In addition, variance has been sought from Zoning Resolution Section 23-47 (minimum required rear yards) and 23-145 (for residential buildings developed or enlarged pursuant to the quality housing program;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within a C4-2 (R6 equivalent) Zoning District and partially within an R5 Zoning District within the Special Hillside Preservation District, a mixed-use four-story commercial and residential building with four dwelling units and a full cellar which does not comply with the requirements concerning minimum rear yard and lot coverage, contrary to ZR §§ 23-47 and 23-145, and

WHEREAS, a separate application was filed under BSA Cal. No. 298-06-A to permit construction within the bed of a mapped street and the issue is addressed within a separate resolution; and

WHEREAS, the split lot provision of ZR § 77-11 allows for C4-2 development or an R6 residential equivalent to apply to the entire site; and

WHEREAS, a public hearing was held on this application on September 18, 2007, after due notice by publication in the *City Record*, and then to decision on October 16, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of the application, conditioned on LEED certification and a limitation of rear yard access to tenants; and

WHEREAS, the subject premises is located on the west side of Montgomery Avenue, between Fort Place and Victory Boulevard; and

WHEREAS, the lot is an irregular F-shaped site, with 22’-6” of frontage on Montgomery Avenue, a width ranging from between 23’-0” and 40’-0” and a depth of approximately 77’-0”; and a total lot area of 2,386 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, because of the size of the block and the fact that more than 50 percent of the zoning lots therein are developed with buildings, the site is within an area which can be defined as predominantly built-up, per ZR § 12-10 (“Predominantly built-up area”); and

WHEREAS, the applicant proposes to construct a mixed use four-story building with full cellar with a total floor area of approximately 6,838 sq. ft. (8,051 sq. ft. is the maximum permitted) comprised of approximately 5,137 sq. ft. of residential space and 1,701 sq. ft. of commercial space, a total FAR of 2.82 (an FAR of 3.4 is permitted), a lot coverage of 69 percent (60 percent is the maximum permitted), and an open space ratio of 31 percent (40 percent is the minimum required), and without the required rear yard for the residential units along the entire rear lot line; and

WHEREAS, the applicant notes that the following are unique physical conditions, which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the irregular shape of the lot; (2) fragmentation of the rear lot line; and (3) the uneven, shallow depth of the lot; and

WHEREAS, as to the irregular shape, the applicant states that the lot has a sawtooth shape with many angles; and

WHEREAS, as to the uniqueness of the shape of the lot, the applicant submitted a 400-ft. radius diagram, which reflects that there are no other lot in the area with as many lot lines; and

WHEREAS, the Board reviewed the submitted diagram and agrees that the subject lot is the only one within the radius with such an irregular shape; and

WHEREAS, the applicant asserts that the lot shape results in inefficient floor plates for residential use, and a corresponding decrease in the value of the units; and

WHEREAS, as to the fragmentation of the rear lot line, the lot line is divided into segments of 23’-0, 5’-8”, and 11’-4” in length, with consequently varying depths to the property; and

WHEREAS, the 23’-0” rear lot line is

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approximately 77'-2' deep, while the 5'-8", and 11'-4" lines are approximately 52'-11" and 43'-0" deep, respectively; and

WHEREAS, the applicant asserts that the combination of the fragmented rear yard and its uneven, shallow depth create a hardship in complying with rear yard requirements of 30 feet for residential units; and

WHEREAS, the applicant also represents that the fragmented rear yard and its uneven, shallow depth result in inefficient floor and restricts the usage of allowable floor area in an efficient manner on the site, thereby creating less marketable units; and

WHEREAS, the applicant represents that the rear yard waiver along the 5'-8" and 47'-2" length rear lot lines would allow the property to utilize its as of right floor area and provide a more efficient floor plate thereby creating units that are marketable given the constraints of the site; and

WHEREAS, such a waiver would result in higher lot coverage; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) two as of right four-story mixed-use buildings with total gross living area of 5,463 sq. ft., (2) an alternate four-story mixed use building with gross living area of 5,463 sq. ft. and (3) the proposed four story mixed use building with approximately 5,137 sq. ft. of residential space and 1,701 sq. ft. of commercial space, for a total of 6,398 sq. ft. of total floor area; and

WHEREAS, the applicant asserts that the two as of right scenarios would not provide a sufficient rate of return; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is comprised primarily of mixed use commercial/residential and residential buildings; and

WHEREAS, the applicant notes that the lot coverage of the residential portion of the building will be increased by only 9 percent over the 60 percent requirement; and

WHEREAS, additionally, the Board notes that Lots 118 and 112 abutting the north and south of the subject site are vacant and that Lot 126 to the south and Lots 3

and 4 to the west have full rear yards and would not be affected by the proposed development and the rear yard waivers requested along such lot lines; and

WHEREAS, the Board notes that a 30 foot rear yard is provided over a sufficient portion of the lot to provide light and air to the proposed residential units; 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 applicant represents that the hardship was not created by the owner, but that the irregular shape of the lot is the result of the City's street design; and

WHEREAS, specifically, Victory Boulevard intersects Montgomery Avenue at an angle, which has resulted in the irregularly-shaped subject lot; and

WHEREAS, further, the applicant represents that a certification obtained from the Staten Island Borough Surveyor indicated that the subject lot has existed in its present configuration since on or before 1917; and

WHEREAS, based on the above, the Board agrees that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the proposal is the minimum variance needed to allow for a reasonable and productive use of the site; and

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

WHEREAS, thus, 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 an Unlisted action pursuant to Section 617 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) 08BSA004R dated September 17, 2007; 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the

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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 each and every one of the required findings under ZR § 72-21, to permit, on a site located partially within a C4 Zoning District and partially within an R5 Zoning District within the Special Hillside Preservation District, a mixed-use four-story commercial and residential building with full cellar which does not comply with the requirements concerning minimum rear yard setback and lot coverage, and is contrary to ZR §§ 23-47 and 23-145, *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, 2006" – eleven (11) sheets and "Received August 8, 2007" – one (1) sheet; and *on further condition*:

THAT the parameters of the development shall be: a total floor area of 6,838 sq. ft., a lot coverage of 69 percent and an open space ratio of 31 percent in conformance with the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

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, October 16, 2007.

**A true copy of resolution adopted by the Board of Standards and Appeals, October 16, 2007.
Printed in Bulletin Nos. 39-41, Vol. 92.**

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