

303-13-BZ

CEQR #14-BSA-069X

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application November 15, 2013 – Variance (§72-21) to allow a new mixed use building with 36 residential units and community facility space. R6 & C1-4 zoning districts.

PREMISES AFFECTED – 506-510 Brook Avenue, east side of Brook Avenue between 147th and 148th Street, Block 2274, Lot(s) 6, 7 and 8, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda..... 4

Negative:.....0

Absent: Vice-Chair Hinkson.....1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated September 20, 2013, with regards to the subject site reads in pertinent part:

The proposed mixed use building is (6) stories 36 residential units and a community facility.

The proposed building does not meeting [sic] the following zoning requirements:

ZR 23-145, ZR 23-22, ZR 25-25; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R6 (C1-4) zoning district, the construction of a mixed-use residential and community facility building, contrary to ZR §§ 23-145, 23-22 and 25-25; and

WHEREAS, a public hearing was held on this application on February 3, 2015, after due notice by publication in *The City Record*, with continued hearings on March 3, 2015, March 31, 2015, June 2, 2015, July 21, 2015, September 22, 2015 and November 17, 2015, and then to decision on December 15, 2015; and

WHEREAS, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 1, Bronx, recommends approval of this application; and

WHEREAS, the application is brought on behalf of SoBro Development Corporation, the real estate development arm of the South Bronx Overall Economic Development Corporation, a not-for-profit organization, whose stated mission is to enhance the quality of life in the South Bronx by strengthening businesses and creating innovative economic, housing, educational, and career development programs for youth and adults; and

WHEREAS, the subject site consists of three lots (Lots 6, 7 and 8) on the southeast corner of Brook Avenue and East 148th Street, in an R6 (C1-4) zoning district, in the Bronx; and

WHEREAS, each lot has approximately 25 feet of frontage (and the subject site has a total of 75 feet of frontage) along Brook Avenue, Lot 8 has approximately 95 feet of frontage along East 148th Street and Lots 6 and 7 each have a depth of 98 feet; and

WHEREAS, Lots 6 and 7 each have a total lot area of approximately 2,450 sq. ft., Lot 8 has a total lot area of approximately 2,375 sq. ft. and the subject site has approximately 7,275 sq. ft. of total lot area; and

WHEREAS, Lot 6 contains a five-story community facility and residential building and Lots 7 and 8 have been vacant since approximately 1976; and

WHEREAS, the applicant owns Lots 7 and 8 and has a contract to purchase Lot 6 contingent upon the grant of the subject application; and

WHEREAS, the applicant proposes to demolish the existing building on Lot 6 and develop, on all three lots, a six-story mixed-use building with a total of 35,943 sq. ft. of floor area; the building will contain 36 residential units of affordable housing comprised of studios, one- and two-bedroom apartments with a total residential floor area ratio (“FAR”) of 4.47 (32,544 sq. ft.) and 3,399 sq. ft. of floor area on the ground floor and cellar level to be used as a church; the proposed building will have lot coverage of 82 percent and provide no off-street accessory parking space; and

WHEREAS, the church space in the proposed development will be filled by the church currently operating on the ground floor of the five-story mixed-use building located on Lot 6; and

WHEREAS, the church is the owner of Lot 6 and has agreed to relocate all existing tenants to other upgraded housing developed by the subject applicant; and

WHEREAS, the applicant notes that the proposal is an affordable housing project, with an income range for the dwelling units of 40 percent to 80 percent of area median income, and will be financed with a previously agreed-to initial capital allocation from the Office of the Bronx Borough President, the sale of Low Income Housing tax credits from New York State Division of Housing and Community Renewal, private bank financing and deferred developer fees; and

WHEREAS, in order to construct the building as proposed, the applicant seeks the following waivers: (1) residential FAR (a maximum residential FAR of 3.00 is permitted, per ZR § 12-145); (2) lot coverage (the maximum permitted residential lot coverage is 80 percent, per ZR § 23-145); (3) number of dwelling units (the maximum number of dwelling units is 32, per ZR § 23-22); and (4) required accessory off-street parking (13 spaces are required, per ZR § 25-25); and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) sandy soil conditions with poor load bearing capacity; (2) contaminated subsurface conditions; and (3) the presence of a five-story building on Lot 6 that must be demolished; and

303-13-BZ
CEQR #14-BSA-069X

WHEREAS, the applicant represents that Lots 7 and 8 contain miscellaneous fill to a depth of approximately 8 to 10 feet followed by approximately 42 feet of fine to coarse sand with trace silt and gravel and that, as a result, a mat foundation must be used in order to provide optimal support for the development; and

WHEREAS, in response to questions posed by the Board, the applicant investigated and reviewed the soil bearing conditions of lots within 1,500 feet of the subject site and represents that the poor load bearing soil condition at the subject site is a unique condition in the area; and

WHEREAS, the presence of several metals above allowable concentrations in the soil and groundwater collected at the subject site will also necessitate environmental remediation measures prior to development; and

WHEREAS, in addition, the building located on Lot 6 is attached by a party wall to an occupied five-story building supported by a sensitive stone rubble foundation set on weak sandy soil and, thus, demolition of the building on Lot 6 will require stabilization of the adjacent building to avoid inversely impacting its structural integrity; and

WHEREAS, the sandy soil affects the underpinning work required to demolish the building on Lot 6 in that it, *inter alia*, increases the level of shoring, posting, bracing, transferring of loads, and stabilizing methods and techniques, all at significant cost; and

WHEREAS, based upon the above, the Board agrees that the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, nevertheless, the applicant asserts that there is no reasonable possibility that the development of the site with affordable housing in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant represents that the site's unique conditions create premium construction costs as follows: (1) \$303,000 for the construction of a mat slab foundation (nearly double the cost of a standard foundation); (2) \$635,000 for site remediation; and (3) \$515,000 for the demolition of the Lot 6 building and underpinning on the site; and

WHEREAS, the applicant states that an as-of-right building would have 21 dwelling units at a premium construction cost of approximately \$69,190 per unit; in contrast, the proposed building distributes the premium construction costs over 36 dwelling units, at a cost of \$40,361 per unit, making affordable housing at the site feasible; and

WHEREAS, additionally, in an as-of-right

scenario, parking would have to be provided in the cellar, supplanting, in part, the community use required by Quality Housing; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that an affordable housing development in strict compliance with applicable zoning requirements is feasible; and

WHEREAS, the applicant represents that the proposed building 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding area is primarily residential; that there are several six-story multiple dwellings along Brook Avenue on adjacent blocks; the proposed building height of 62'-2" (measured to the top of the parapet) is contextual for a corner lot in the area and there are two buildings directly across Brook Avenue that are as tall as or taller than the subject proposal; and

WHEREAS, the applicant states that the neighborhood is well-served by public transit, including the No. 2 and No. 5 trains with two separate stations within approximately three blocks of the site, multiple bus lines, including the Bx2, Bx4, Bx15, Bx17, Bx19 and Bx21, which run on adjacent streets, and Metro-North, which has a station approximately half a mile away; and

WHEREAS, the applicant represents that there are very low rates of automobile ownership in affordable housing developments of an average of 60 percent of area median income, like the subject proposal, particularly in areas, like the subject area, that are well-served by public transportation and, additionally, there are thirteen public or private parking lots within 1,200 feet of the subject site, as well as ample street parking on Brook Avenue and surrounding side streets; and

WHEREAS, further, the applicant represents that the subject site is located in one of the lowest income neighborhoods in the United States and that the proposed development fills a need for additional units of affordable housing in the area; 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, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site and applicant's objective to provide affordable housing; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to

303-13-BZ

CEQR #14-BSA-069X

be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; 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 CEQR No. 14-BSA-069X, dated November 6, 2015; 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, by letter dated February 3, 2014, the New York City Landmarks Preservation Commission ("LPC") states that the subject properties have no architectural or archaeological significance; and

WHEREAS, by letter dated October 9, 2015, the New York State Historic Preservation Office ("SHPO") states that the subject proposal will have No Adverse Effect upon historic resources provided the following conditions are met: (1) a construction protection plan shall be put in place for all historic resources within 90 feet of the proposed construction and the plan shall be developed in accordance with the New York City Department of Buildings "Technical Policy Procedure Notice #10/88" and (2) if there are substantive changes to the proposed new construction height or massing, consultation with the SHPO shall resume; and

WHEREAS, the New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis ("DEP") reviewed the project for potential hazardous materials; and

WHEREAS, DEP reviewed and accepted the Remedial Action Plan and Construction Health and Safety Plan provided that particular revisions to each were made by the applicant; and

WHEREAS, the applicant made the revisions requested by DEP; and

WHEREAS, DEP additionally requested that a Remedial Closure Report certified by a Professional Engineer and indicating that all remedial requirements have been properly implemented be submitted to DEP for review and approval; 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 prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an R6 (C1-4) zoning district, the construction of a mixed-use residential and community facility use building, contrary to ZR §§ 23-145, 23-22 and 25-25, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 14, 2015" – fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: maximum lot coverage of 82 percent, maximum residential floor area of 32,544 sq. ft., and maximum residential floor area ratio ("FAR") of 4.47, as indicated on the BSA-approved plans;

THAT any change in ownership, operator, or control of the building shall require the prior approval of the Board;

THAT a construction protection plan developed in accordance with DOB's "Technical Policy Procedure Notice #10/88" shall be put in place for all historic resources within 90 feet of the proposed construction and the plan;

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

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 DOB will not issue a Certificate of Occupancy prior to DEP's approval of the Remedial Closure Report;

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

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, December 15, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, December 15, 2015.

Printed in Bulletin Nos. 49-51, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

