

Note.—This resolution is final but subject to formal revision before publication in the Bulletin. Please notify the General Counsel of any typographical or other formal errors so that corrections may be made before the Bulletin is published.

BOARD OF STANDARDS AND APPEALS

MEETING OF: November 30, 2020
CALENDAR NO.: 303-13-BZ
PREMISES: 506-510 Brook Avenue, Bronx
Block 2274, Lots 6, 7, and 8

ACTION OF BOARD — Application granted on condition.

THE VOTE —

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta, and
Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION —

The decision of the Department of Buildings (“DOB”), dated February 7, 2020, acting on DOB Application No. 220338304 reads in pertinent part: “Prior BSA variance Cal # 303-13-BZ, issued December 15, 2015 has expired. Proposed building with 40 dwelling units exceeds the number of dwelling units (36) in the stamped approved plans accompanying BSA resolution of December 15, 2015. Refer to BSA for renewal and amendment of prior variance.”

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of time to complete construction of a variance previously granted by the Board pursuant to Z.R. § 72-21, which permitted the construction of a new mixed-use building consisting of residential units and community facility space and expired on December 25, 2019, and amendment of the previously granted variance.

A public hearing was held on this application on October 6, 2020, after due notice by publication in *The City Record*, and then to decision on November 30, 2020. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. Community Board 1, the Bronx, recommends approval of this application.

The Premises are located on the southeast corner of Brook Avenue and East 148th Street, within an R6 (C1-4) zoning district, in the Bronx. With approximately 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, 7,275 square feet of lot area, the Premises are occupied by an existing five-story mixed-use residential and commercial building and two vacant lots.

The Board has exercised jurisdiction over the Premises since December 15, 2015, when, under the subject calendar number, the Board granted a variance to permit the construction of a mixed-used residential and community facility use building, on condition that the following 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 of ("FAR") of 4.47, as indicated on the BSA-approved plans; any change in ownership, operator, or control of the building require the prior approval of the Board; a construction protection plan developed in accordance with DOB's "Technical Policy Procedure Notice # 10/88" be put in place for all historic resources within 90 feet of the proposed construction and the plan; substantial construction be completed in accordance with Z.R. § 72-23; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); DOB will not issue a certificate of occupancy prior to DEP's approval of the Remedial Closure Report; the approved plans be considered approved only for the portions related to the specific relief granted; and DOB 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.

The time to complete construction having expired, the applicant now seeks an extension of time to complete construction and amendment of the previously granted variance. Because this application was filed less than two years after the expiration of the time to complete construction, the applicant requests a waiver, pursuant to Section 1-14.2 of the Board's Rules of Practice and Procedures, of Section 1-07.3(c)(2), of the Board's Rules to permit the filing of this application.

The applicant proposes to amend its original grant by increasing the number of dwelling units from 36 to 40, contrary to Z.R. § 23-22; and decrease the previously approved FAR from 4.47 to 4.28, contrary to Z.R. § 22-145. The applicant submits that these changes would not modify the previously approved bulk envelope, building height, or lot coverage. The applicant represents that these changes are minimal and are necessary due to changes in the NYC Housing Preservation Department's ("HPD") design guidelines and HPD's requirements for deeper affordability.

The applicant represents that the variance as amended still reflects the minimum necessary, as per Z.R. § 72-21(e). Because the applicant is a not-for profit entity, the applicant is not required to submit financial information about the proposed project; however, in support of its contention that the requested variance is the minimum necessary, the applicant presents a summary of three financial factors including (1) increased construction costs; (2) deep project affordability; and (3) inclusion of a non-income-generating

superintendent's apartment. To begin, the applicant states that the original quote may have been insufficient to complete the project at that time due to the early nature of project budgeting and scoping and, over time, the increase in New York City construction, labor rates and productivity, material prices, and competitive condition of the marketplace have had a negative impact on the financial viability of the minimum variance previously approved. Additionally, the applicant notes that it must comply with HPD's Design Guidelines which permit smaller units and allow for more units within the same bulk envelope. Finally, unlike the currently proposed project, the original application did not include an on-site superintendent's unit, which resulted in a loss of income for the project with 35 rent producing units instead of 36.

At hearing, the Board expressed concerns on the clarity of the project's funding streams; the status of environmentally related violations at the Premises; and that the submitted drawings do not include all the materials to be used on all of the building façades. In response, the applicant elaborated on its proposed affordability mix, the current proposed affordability mix, and how HPD's programs have changed to affect its funding. The applicant further elaborated on its progress of settlement with New York City for violations and submitted revised plans which include note all of the materials used on the façades.

Based upon its review of the record, the Board has determined that the requested rule waiver, extension of time to complete construction, and amendment to the previously granted variance are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures *amends* the resolution, dated December 15, 2015, so that as amended this portion of the resolution shall read: "to *permit* an increase in the number of dwelling units from 36 to 40 and decrease the previously approved FAR from 4.47 to 4.28 and to *extend* the time to complete construction by four years and six months, to expire on June 8, 2025; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received November 2, 2020- Forty-two (42) sheets'; and *on further condition*:

THAT the following shall be the bulk parameters of the building: maximum residential floor area of 32,544 sq. ft., and maximum residential floor area 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 this approval of the variance, as amended, assumes development of a project of income levels for dwelling units of 40 percent to 80 percent of area median income, stated in the December 15, 2015 BSA resolution;

303-13-BZ

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 DOB shall not issue a certificate of occupancy prior to DEP's approval of the Remedial Closure Report;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 303-13-BZ'), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by June 8, 2025;

THAT substantial construction be completed in accordance with Z.R. § 72-23;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

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 plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 30, 2020.

CERTIFICATION

***This copy of the Resolution
dated November 30, 2020
is hereby filed by
the Board of Standards and Appeals
dated December 8, 2020***

A handwritten signature in black ink, appearing to read 'Carlo Costanza', is written over a white rectangular background.

***Carlo Costanza
Executive Director***