

31-10-BZ

CEQR #10-BSA-050Q

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 13, 2011, acting on Department of Buildings Application No. 401400239, reads in pertinent part:

1. Proposed commercial use for portion of lot 41 in R5 district (parking @ cellar) is contrary to ZR Section 22-00;
2. Proposed parking contrary to ZR Section 36-21; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within a C1-2 (R6) zoning district, a C2-3 (R6) zoning district, a C1-2 (R7A) zoning district, and an R5 zoning district, a two-story and mezzanine commercial building with an accessory parking garage at the cellar level, which does not comply with the zoning regulations for use or parking, contrary to ZR §§ 22-00 and 36-21; and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in the *City Record*, with continued hearings on April 12, 2011, August 16, 2011, September 27, 2011 and December 13, 2011, and then to decision on April 3, 2012; and

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

WHEREAS, Community Board 4, Queens, recommended conditional approval of a prior iteration of the application, described below, which requested additional waivers related to bulk; and

WHEREAS, City Council Member Daniel Dromm recommends approval of this application; and

WHEREAS, a member of the community provided oral testimony in opposition to the prior iteration of the application; and

WHEREAS, the site is located on an irregularly-shaped through lot with 200 feet of frontage on Queens Boulevard to the south, 170 feet of frontage on Broadway to the east, and 150 feet of frontage on Reeder Street to the west, with a total lot area of 35,564 sq. ft.; and

WHEREAS, the site is located within four separate zoning districts: (1) 25,904 sq. ft. of the site is within a C1-2 (R6) zoning district; (2) 5,844 sq. ft. of the site is within a C2-3 (R6) zoning district; (3) 3,582 sq. ft. of the site is within an R5 zoning district; and (4) 233.5 sq. ft. of the site is within a C1-2 (R7A) zoning district; and

WHEREAS, the site comprises two tax lots; Lot 41, which comprises the western portion of the site at the corner of Reeder Street and Queens Boulevard, is occupied by a one-story eating and drinking establishment (a Wendy’s restaurant) which is proposed to be demolished; and Lot 28 which comprises the eastern portion of the site at the corner of Broadway and Queens Boulevard, is currently vacant; and

WHEREAS, the applicant submitted a report from a title company which states that, according to Department of Finance records, there have been no changes to the tax map since 1961 and therefore the dimensions of the lots have remained the same since that time; and

WHEREAS, the applicant proposes to construct a two-story and mezzanine commercial building with a floor area of 63,894 sq. ft. (1.80 FAR), with retail (Use Group 6) at the first floor and a food store (Use Group 6) at the first floor mezzanine and second floor, a height of 48 feet, and 111 accessory parking spaces (and 11 queuing spaces) at the cellar level; and

WHEREAS, the proposal will have the following non-complying parameters: 111 accessory parking spaces (and 11 queuing spaces) (the minimum number of accessory parking spaces required for the proposed building is 264); and accessory parking located in the R5 portion of the site (commercial use is not permitted in the R5 district); and

WHEREAS, the applicant initially proposed a five-story commercial building with a floor area of 121,339 sq. ft. (3.41 FAR), a total height of 88 feet, and 251 accessory parking spaces, to be occupied by Use Group 6 retail use at the first, second, and third floors, and accessory parking at the cellar, fourth, and fifth floors; and

WHEREAS, the original proposal complied with the required number of parking spaces under ZR § 36-21, but necessitated a use variance for the portion of the building located in the R5 district, and necessitated bulk waivers associated with floor area, lot coverage, front

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yard, side yard, rear yard, height, and parking located more than 23'-0" above curb level; and

WHEREAS, the Board expressed concern about the size of the proposed building and the extent of the requested variance, and directed the applicant to revise the application to provide the maximum number of parking spaces within a building that complied with the underlying bulk regulations; and

WHEREAS, in response, the applicant revised the application to provide an interim proposal for a two-story and mezzanine commercial building with a 91-space (and nine queuing spaces) accessory parking garage at the cellar level located entirely within the commercial portion of the zoning lot; the interim proposal complied with all underlying zoning regulations with the exception of the minimum number of parking spaces; and

WHEREAS, in response to additional concerns raised by the Board regarding the number of parking spaces provided, the applicant revised the plans to reflect the subject proposal, which extends the cellar level accessory parking garage into the R5 portion of the zoning lot, thereby providing 20 additional parking spaces but triggering the need for the requested use waiver; and

WHEREAS, because the proposed accessory commercial parking is not permitted within the R5 portion of the site and because the building does not provide the required number of accessory parking spaces, the applicant requests the subject 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 regulations: (1) the presence of an MTA subway tunnel below the site; (2) the high water table at the site; (3) the location within four different zoning districts; and (4) the irregular shape of the site; and

WHEREAS, as to the presence of the MTA subway tunnel, the applicant submitted an engineer's report which states that an MTA subway tunnel easement runs beneath the northeast corner of the subject site; and

WHEREAS, the applicant states that the subway tunnel is a "cut and cover" style tunnel, and is therefore located very close to the surface, and there is a subway station (the Grand Avenue – Newtown station) located directly below the site; and

WHEREAS, the applicant represents that there are practical difficulties associated with developing directly over the subway tunnel and subway station; and

WHEREAS, specifically, the applicant states that the portion of the proposed underground parking structure adjacent to the subway tunnel easement must be designed to safely support all of the imposed loads so as to protect the existing subway structure; and

WHEREAS, the applicant notes that the presence of the subway tunnel and easement also requires the owner to file plans with the MTA and to comply with all

restrictions placed on the work, as the MTA will not allow any potential for disturbance of the existing subway structure; and

WHEREAS, the engineer's reports submitted by the applicant states that, due to the existing subway tunnel, a temporary soil bracing system will be required for the proposed excavation to achieve the planned parking level bottom (mat foundation slab), and that heavy steel HP Soldier Piles supported by steel walers, raker bracing, and wood lagging should be installed along the entire perimeter of the proposed excavation site so that the building would bypass the tunnel; and

WHEREAS, the applicant states that the location of the subway tunnel and subway station preclude the use of a portion of the site for underground parking or for cellar floor area, and therefore the proposed underground parking structure must be located to the west of the subway easement, which is approximately 15 feet away from the subway tunnel foundation wall; and

WHEREAS as to the high water table on the site, the engineer's report submitted by the applicant states that the soil borings performed on the site encountered groundwater at depths ranging from 9'-0" to 11'-6" below grade, and groundwater is expected to be encountered during the excavation for the construction of the proposed building and foundations; and

WHEREAS, the engineer's report states that, due to the location of the groundwater, extensive temporary and permanent site dewatering will be required for the entire site; and

WHEREAS, the engineer's report further states that possible dewatering methods would include well points, deep wells, sumps and pumps, and that the dewatering must be evaluated to ensure that it will not adversely affect the structural stability and possible settlement of the adjacent buildings and the underground subway structure; and

WHEREAS, the applicant states that the shallow groundwater on the site makes the construction of a sub-cellar for additional parking cost prohibitive; and

WHEREAS, as to the location of the zoning district boundaries, the applicant states that the site is located within four separate zoning districts and while the majority of the site is located within commercial zoning districts, there is a 3,582 sq. ft. portion located at the northwest corner of the site, comprising approximately ten percent of the site, which is entirely within an R5 zoning district; and

WHEREAS, the applicant states that the site is also irregularly shaped, as the lot has three separate frontages with an irregular angle at the intersection of Queens Boulevard and Reeder Street, and the rear of the site includes a rectangular protrusion which results in the lot having a total of ten sides; and

WHEREAS, the applicant represents that the

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irregular shape of the site, and the location of the zoning district boundaries result in design constraints which contribute to the hardship of constructing an as-of-right building on the site; and

WHEREAS, the Board is not persuaded by the assertions of unnecessary hardship or practical difficulty caused by the zoning lot boundaries or the irregular shape of the site, and finds that the size of the lot, at 35,564 sq. ft., is large enough to compensate for such conditions; and

WHEREAS, however, based upon the above, the Board finds that the location of the subway tunnel and the high water table are unique conditions which, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as-of-right scenario consisting of a three-story and mezzanine commercial building with 59,300 sq. ft. of rentable retail space and a total of 227 parking spaces with 117 below grade spaces and 110 above grade spaces; (2) an identical as-of-right scenario with the ground floor raised two feet above grade (and a corresponding decrease in the height of the cellar level); (3) an as-of-right retail scenario consisting of a four-story commercial building with 46,594 sq. ft. of rentable retail space and a total of 174 parking spaces, located above grade; and (4) the proposed two-story and mezzanine commercial building with retail (Use Group 6) at the first floor, a food store (Use Group 6) at the first floor mezzanine and second floor, and 111 accessory parking spaces (and 11 queuing spaces) in the cellar; and

WHEREAS, the applicant concluded that the proposed scenario was the only scenario of the four analyzed that would realize a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to analyze a lesser variance scenario consisting of the addition of 32 parking stackers to the accessory cellar level garage to increase the number of parking spaces provided at the site; and

WHEREAS, in response, the applicant provided a revised financial analysis which concluded that the lesser variance scenario would not realize a reasonable return because the introduction of 32 parking stackers and the need for additional ceiling height to accommodate the stackers significantly impacts the below grade sub-surface costs; and

WHEREAS, based upon its review of the submissions, the Board has determined that because of the subject lot'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 development 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 Board notes that the modified proposal only seeks to reduce the number of required parking spaces and to allow a portion of the accessory parking lot to be located within the R5 zoning district; and

WHEREAS, the applicant states that the proposed retail space and food store are located entirely within the commercial portion of the zoning lot and are permitted as-of-right, and that the cellar level accessory garage is permitted as-of-right on all but the 3,582 sq. ft. portion of the site located within an R5 zoning district, which only accounts for approximately ten percent of the total lot area; and

WHEREAS, the applicant further states that the proposed accessory parking garage within the R5 portion of the site will be located entirely below grade, and the R5 portion of the site will consist of a landscaped area above grade; and

WHEREAS, accordingly, the applicant represents that the proposed use of the R5 portion of the site for below grade accessory commercial parking will not have any negative impacts on the surrounding neighborhood; and

WHEREAS, as to the reduction in parking, the applicant states that the proposed building provides sufficient parking to accommodate the anticipated parking demand at the site; and

WHEREAS, the applicant submitted a traffic study which concluded that the proposed building would require a total of 48 parking spaces during the weekday peak parking demand time periods and 99 parking spaces during the Saturday peak parking demand time periods, and therefore the 111 on-site parking spaces (and 11 queuing spaces) proposed for the site will be adequate to accommodate the parking demand for the proposal; and

WHEREAS, the applicant represents that parking demand will also be lessened because the site is well served by mass transit, as the Grand Avenue/Newtown stop on the M and R subway lines is located at the subject intersection, and both Queens Boulevard and Broadway are serviced by MTA bus routes; 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, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as discussed above, the applicant initially requested a five-story commercial building with a

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floor area of 121,339 sq. ft. (3.41 FAR), a total height of 88 feet, and 251 accessory parking spaces, which complied with the required number of parking spaces under ZR § 36-21, but necessitated a use variance for the portion of the building located in the R5 district, and necessitated bulk waivers associated with floor area, lot coverage, front yard, side yard, rear yard, height, and parking located more than 23'-0" above curb level; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its plans on several occasions, ultimately providing the subject proposal significantly reducing the size of the building and eliminating the previously requested bulk waivers; and

WHEREAS, the Board directed the applicant to revise the applicant to eliminate the request for a reduction in the required number of parking spaces; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary 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 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 (EAS) CEQR No. 10BSA050Q, dated March 29, 2012; 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 Landmarks Preservation Commission ("LPC") reviewed the project for potential archaeological impacts and requested that an archaeological documentary study (Phase IA) be submitted for review and approval; and

WHEREAS, a Restrictive Declaration for an archaeological study was executed on March 16, 2012 and filed for recording on March 21, 2012; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

A true copy of resolution adopted by the Board of Standards and Appeals, April 3, 2012

Printed in Bulletin No. 15, Vol. 97.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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 each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site located partially within a C1-2 (R6) zoning district, a C2-3 (R6) zoning district, a C1-2 (R7A) zoning district, and an R5 zoning district, a two-story and mezzanine commercial building with an accessory parking garage at the cellar level, which does not comply with the zoning regulations for use or parking, contrary to ZR §§ 22-00 and 36-21, *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 1, 2011" – ten (10) sheets, and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 63,894 sq. ft. (1.80 FAR), a height of 48 feet, and 111 accessory parking spaces (and 11 queuing spaces) at the cellar level, as indicated on the BSA-approved plans;

THAT landscaping will be planted and maintained as per the BSA-approved plans;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until, pursuant to the Restrictive Declaration, the LPC has issued to DOB, as applicable, either a Notice of No Objection, Notice to Proceed, Notice of Satisfaction, or Final Notice of Satisfaction;

THAT substantial construction will proceed 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) only;

THAT the approved plans will 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, April 3, 2012.