

31-11-BZ

CEQR #11-BSA-070X

APPLICANT – Goldman Harris LLC, for Bronx Shepherds Restoration Corporation, owner.

SUBJECT – Application March 28, 2011 – Variance (§72-21) to allow a mixed use community facility and commercial building, contrary to use (§32-12), floor area (§33-123), rear yard (§33-292), and height and setback (§33-432) regulations. C8-3 zoning district.

PREMISES AFFECTED – 1665 Jerome Avenue, west side of Jerome Avenue between Featherbed Lane and Clifford Lane, Block 2861, Lot 35, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Nadia Alexis.

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 Bronx Borough Commissioner, dated March 3, 2011, acting on Department of Buildings Application No. 220105449, reads, in pertinent part:

ZR 32-15 Proposed use of Use Group 3 is not permissible in C8-3 district.

ZR 33-123 Proposed total building FAR...is greater than maximum allowed FAR of 6.50 (65,000 sq. ft.) for a community facility in a C8-3 district.

ZR 33-432 Proposed building setback of 10'-0" is less than 15'-0" minimum required front setback.

ZR 33-432 Provide sky exposure plane (slope).

Proposed project does not comply with the required sky exposure plane (slope); and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C8-3 zoning district, the proposed construction of a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building which does not comply with the underlying zoning regulations for use, floor area ratio ("FAR"), front setback, and sky exposure plane, contrary to ZR §§ 32-15, 33-123 and 33-432; and

WHEREAS, a public hearing was held on this application on July 12, 2011 after due notice by publication in *The City Record*, with a continued hearing on November 15, 2011, and then to decision on December 13, 2011; and

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

WHEREAS, Community Board 5, Bronx, submitted a resolution stating that it waived its hearing for this

application, but noted that it previously issued a letter in support of the subject project; and

WHEREAS, this application is brought on behalf of the Bronx Shepherds Restoration Corp. (the "Bronx Shepherds"), a not-for-profit entity organized to provide affordable housing, community programs and other social services to the Bronx community; and

WHEREAS, the applicant submitted letters in support of the project from the following elected officials: Bronx Borough President Ruben Diaz, Jr., City Council Member Helen Diane Foster, City Council Member G. Oliver Koppel, New York State Assembly Member Vanessa L. Gibson, New York State Senator Ruben Diaz, Sr., and Congressman Jose E. Serrano; and

WHEREAS, the site is located on the west side of Jerome Avenue, between Featherbed Lane and West Clifford Place, within a C8-3 zoning district; and

WHEREAS, the subject site has a width of 100 feet, a depth of 100 feet, and a total lot area of 10,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building on the subject site; and

WHEREAS, the proposed building will have the following uses: (1) Use Group 6 retail use on the ground floor; (2) a Use Group 4 job training center on the second floor and a portion of the third floor; and (3) a Use Group 3 non-profit institution with sleeping accommodations on floors three through 13, consisting of 71 dwelling units (57 units of affordable housing for low-income families and 14 special needs units for young adults aging out of foster care); and

WHEREAS, the proposed Use Group 3 non-profit institution with sleeping accommodations is not permitted in the subject C8-3 zoning district; therefore a use variance is required; and

WHEREAS, in addition, the proposed building has the following non-complying parameters: a total floor area of 75,221 sq. ft. (7.52 FAR) (the maximum permitted total floor area is 65,000 sq. ft. (6.5 FAR)), including 70,598 sq. ft. of community facility floor area (7.06 FAR) and 4,623 sq. ft. of ground floor retail floor area (0.46 FAR); a setback of 10'-0" above a height of 36'-0" (a minimum setback of 15'-0" is required above a height of 60'-0"); and encroachment into the sky exposure plane; and

WHEREAS, the applicant originally proposed to construct a 13-story building with a total floor area of 80,200 sq. ft. (8.02 FAR) and a rear yard with a minimum depth of only 10'-0", which resulted in an additional non-compliance with the minimum buffer requirement of 30'-0" under ZR § 33-292; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting the current proposal, with a total floor area of 75,221 sq. ft. (7.52 FAR) and a complying rear yard with a minimum depth of 30'-0"; and

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WHEREAS, because the proposed Use Group 3 use is not permitted in the subject C8-3 zoning district and relief from the bulk requirements of the underlying zoning district is necessary, the applicant seeks a variance to permit construction of the proposed building; and

WHEREAS, the applicant states that 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) the site's shallow bedrock condition; (2) the presence of a 60-ft. high rock outcropping at the rear of the site; and (3) the adjacency of an elevated subway line; and

WHEREAS, as to the subsurface conditions, the applicant states that the presence of bedrock just five feet below grade impedes construction on the subject site; and

WHEREAS, the applicant submitted a report from a geotechnical and environmental consultant stating that, after analyzing boring samples from the bedrock, it determined that the bedrock is in "good" to "excellent" condition, and therefore the ability of standard excavation equipment to excavate the bedrock will be very limited; and

WHEREAS, the applicant represents that constructing a foundation with a conventional depth would require blasting the bedrock, which is cost prohibitive; and

WHEREAS, the applicant states that the depth of the bedrock also prevents the developer from constructing a typical concrete slab on footings foundation; and

WHEREAS, specifically, the applicant states that a typical concrete slab foundation would be on footings that would sit on bearable soil three to five feet below ground, and that due to the location of the bedrock at the site, this construction is not possible and the applicant will instead need to drill piles and caissons into the bedrock and place a concrete slab on top of these piles and caissons; and

WHEREAS, the applicant states that drilling piles and installing caissons is significantly more expensive than a typical concrete slab foundation, and therefore it will add substantial additional costs to the project; and

WHEREAS, in addition to the added costs associated with presence of the bedrock, the applicant states that the inability to excavate the shallow bedrock also prevents the applicant from constructing a cellar to locate some of its program space below grade, which would have enabled it to reduce the FAR of the subject building; and

WHEREAS, specifically, the applicant represents that if not for the location of the bedrock, it could relocate approximately 8,000 sq. ft. of space associated with the proposed retail market, job training facility and/or mechanical equipment for the building into the cellar, which would not count towards the FAR calculations; and

WHEREAS, as to the presence of the rock outcropping, the applicant states that a 60-ft. high rock

outcropping at the rear of the site juts out ten feet from the rear lot line into the site; and

WHEREAS, the applicant submitted a letter from its architect stating that the rock outcropping, in combination with the bedrock underlying the site, creates significant soil and runoff issues; and

WHEREAS, the letter from the architect further states that rainwater will be expressed from the face of the rock outcropping, which will combine with the infiltration of rainfall reaching the site and penetrating the overlying soil, and that extraordinary stormwater management controls will be required to prevent water from entering the lowest level of the building due to the site specific topography, proximity of bedrock to the surface, and shallow depth of the soils; and

WHEREAS, specifically, the stormwater management controls will be comprised of a two-part system: (1) a retention tank placed in the back yard of the building to minimize the runoff into the sewage system, and (2) a sewage pipe running from the retention tank to the stormwater system located in the bed of Jerome Avenue; and

WHEREAS, as to the site's location adjacent to an elevated subway line, the applicant states that it will need to take several measures to mitigate the impact of the development on the subway line; and

WHEREAS, the applicant states that it will drill the piles and caissons needed for the foundation into the bedrock, which will reduce the vibration impact to the elevated subway by more than 20 percent as compared to the typical method of driving the piles; and

WHEREAS, the applicant represents that, although driving the piles would be less expensive, the vibration from driving the piles could disturb the foundation and piers of the adjacent elevated subway line; and

WHEREAS, the applicant states the owner will also provide shoring for the Jerome Avenue side of the subject site, which will protect the foundations and piers of the adjacent elevated subway line from vibrations caused by the drilling of piles and other construction work; and

WHEREAS, the applicant further states that it will take several measures to mitigate the impact of the elevated subway line on the proposed building; and

WHEREAS, specifically, the applicant states that in order to mitigate noise issues emanating from the elevated tracks and impacting the tenants of the building, it will install double hung aluminum windows that will protect residents against noise levels as high as 35 dBA; and WHEREAS, the applicant represents that any as-of-right development at the site would be burdened by the shallow bedrock, the presence of a 60-ft. high rock outcropping at the rear of the site, and the need to protect the elevated subway structure; and

WHEREAS, the Board agrees that these unique physical conditions create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

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WHEREAS, the applicant also states that a variance is requested based on Bronx Shepherds' programmatic need to provide 71 units of affordable housing, including 14 units for young adults aging out of foster care; and

WHEREAS, the applicant states that Bronx Shepherds is seeking financing for the proposal from City, State, and Federal programs including the New York City Department of Housing, Preservation and Development ("HPD"), the New York City Housing Development Corporation's LAMP program, Resolution A Funds allocated by the Bronx Borough President and City Council that subsidize affordable housing developments throughout the Bronx, the New York State Department of Homes and Community Renewal ("HCR"), the New York State Weatherization Assistance Program, and Federal Low Income Housing Tax Credits; and

WHEREAS, a letter dated September 23, 2011 from the HPD Assistant Commissioner confirms that financing of the proposed development is contemplated by the agency; and

WHEREAS, a letter dated December 1, 2011 from the HCR Vice President of Multifamily Finance confirms that financing of the proposed project is contemplated by the agency; and

WHEREAS, the applicant also submitted a letter from Bronx Borough President Ruben Diaz, Jr., confirming that financing of the proposed project is contemplated by his office; and

WHEREAS, the applicant represents that the financing sources for the housing component of the project require a minimum of 50 units for an affordable housing project, and they require such projects to be able to support themselves without a deficit, using the rent subsidy programs that are available; and

WHEREAS, however, the applicant states that the Bronx Shepherds have a programmatic need to provide 14 special needs units for young adults aging out of foster care; and

WHEREAS, the applicant submitted a letter from the Executive Director of the Bronx Shepherds stating that after the age of 18, many of the services available to foster children through various service providers are terminated, and that by providing 14 special needs units in the building where these young adults will be encouraged to live for one to two years before identifying their own apartment, the Bronx Shepherds will extend these services to young adults between the ages of 18 to 21 and prepare them for independent living; and

WHEREAS, the letter from the Bronx Shepherds further states that there is a significant need for this program, as more than 1,100 children age out of the foster care system in the Bronx annually, and that in order to facilitate these young adults' transition to independent living the proposed building will provide services customary for foster children below the age of 18, including GED training, emotional and spiritual support,

life skills, and medical services, as well as providing job training services and home economics training; and

WHEREAS, the applicant states that the occupants of the 14 special needs units will be in the lowest income bracket of the proposal's population and will not be able to carry the cost of their units; therefore the rents paid by the 14 special needs units will be lower than the rents paid by the occupants of the other affordable housing units, and the minimum number of affordable non-special needs units that the proposal must provide to be financially viable is 57; and

WHEREAS, accordingly, the applicant states that the Bronx Shepherds have a programmatic need to provide a total of 71 affordable housing units in the subject building; and

WHEREAS, the applicant states that the requested setback and sky exposure plane waivers are required in order to provide adequately sized floor plates to accommodate the 71 units, as a complying building would require a building with smaller floor plates and a height above the proposed 13 stories in order to satisfy Bronx Shepherds' programmatic need of providing 71 units of affordable housing; and

WHEREAS, the applicant states that there is also a programmatic need to provide the proposed job training center at the site, as job training is a crucial part of the Bronx Shepherds' mission; and

WHEREAS, the applicant states that \$500,000 has been allocated by Assembly Member Gibson to fund programmatic needs for the job training center, which will occupy 10,398 sq. ft. of floor area on the second and third floors, and will provide the following job training programs: GED preparatory program; a commercial drivers license course; a computer training program; training for the New York State weatherization program; and training in food preparation; and

WHEREAS, the applicant represents that the programmatic need for the job training center, combined with the inability to construct a cellar and provide a portion of the job training space below grade, contributes to the requested FAR waiver; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, create practical difficulties and unnecessary hardship in developing the site in strict 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, however, the applicant analyzed an as-of-right alternative consisting of a three-story commercial building with 20,000 sq. ft. of floor area; and

WHEREAS, the financial analysis indicates that the as-of-right scenario is not financially viable due to the premium costs associated with the unique conditions of the site, while an as-of-right commercial building without

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the associated premium costs would be financially viable; 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 characterized by a mix of residential, commercial and community facility uses; and

WHEREAS, the applicant states that the ground floor retail space and the job training center on the second and a portion of the third floor are permitted as-of-right in the subject zoning district, and are consistent with other retail and Use Group 4 community facility uses along Jerome Avenue; and

WHEREAS, the applicant further states that the use of the remainder of the building for Use Group 3 non-profit institution with sleeping accommodations will not negatively affect the adjacent uses in the area, which includes a significant amount of Use Group 2 residential use; and

WHEREAS, as to bulk, the applicant states that the proposed building complies with the underlying zoning regulations for street wall height, total height, yards, and parking, and that the waivers requested for FAR, setback and encroachment into the sky exposure plane are minimal; and

WHEREAS, the applicant submitted a map and a corresponding chart identifying buildings within a one-quarter mile radius of the site with heights equal to or greater than 175 feet above mean sea level, which is the height of the proposed building; and

WHEREAS, the map submitted by the applicant reflects that there are 29 buildings within the study area which have a greater height above mean sea level than the subject site; and

WHEREAS, the Board notes that, due to the 60-ft. high rock outcropping at the rear of the site, the six-story buildings located along Davidson Street, which are situated atop the rock outcropping at the rear of the site, appear similar in height to the subject building when viewed from the street; and

WHEREAS, as to the FAR, the Board notes that the proposed retail and UG 4 community facility space, which represents approximately 15,000 sq. ft. of floor area in the subject building, are permitted as-of-right in the subject C8-3 zoning district; and

WHEREAS, the Board further notes that the requested FAR waiver is largely necessitated by the inability to construct a cellar, as certain uses that could normally be located below grade must be located above grade in the subject building, where they count towards the floor area calculations; 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; and

WHEREAS, as discussed above, the applicant submitted an analysis of an as-of-right alternative and determined that it could not be supported financially; and

WHEREAS, as discussed above, the applicant initially proposed a building with a total floor area of 80,200 sq. ft. (8.02 FAR) and a rear yard with a minimum depth of only 10'-0", which was non-compliant with the buffer requirement under ZR § 33-292 and which the Board was not persuaded was required as a result of the site's unique physical conditions or programmatic needs; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting the current proposal, with a total floor area of 75,221 sq. ft. (7.52 FAR) and a complying rear yard with a minimum depth of 30'-0"; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Bronx Shepherds to carry out its stated needs; 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 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 11BBSA070X, dated November 22, 2011; 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, air quality, and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2011 Remedial Action Plan and Construction Health and Safety Plan; and

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

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WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a window-wall noise attenuation rating of 36.8 dBA OITC) and an alternate means of ventilation (central air conditioning or air conditioning sleeves containing air conditioners) should be provided on the proposed building's north, south and east facades; 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, 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, within a C8-3 zoning district, the proposed construction of a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building which does not comply with the underlying zoning regulations for use, FAR, front setback, and sky exposure plane, contrary to ZR §§ 32-15, 33-123 and 33-432, *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 December 9, 2011"- sixteen (16) sheets; and *on further condition*:

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

THAT the above condition shall be listed on the certificate of occupancy;

THAT the parameters of the proposed building shall be: a total floor area of 75,221 sq. ft. (7.52 FAR); a community facility floor area of 70,598 sq. ft. (7.06 FAR); a commercial floor area of 4,623 sq. ft. (0.46 FAR); a total height of 136'-0"; a setback of 10'-0" above a height of 36'-0"; and encroachment into the sky exposure plane, as illustrated on 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 DOB shall not issue a Certificate of Occupancy until the applicant has provided it with documentation of DEP's approval of the Remedial Closure Report;

THAT the proposed windows shall have a noise attenuation rating of 36.8 dBA OITC on the proposed building's north, south and east facades, and an alternate means of ventilation (central air conditioning or air conditioning sleeves containing air conditioners) shall be provided to maintain a closed window condition;

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;

THAT construction shall proceed in accordance with ZR § 72-23; 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, December 13, 2011.

A true copy of resolution adopted by the Board of Standards and Appeals, December 13, 2011.

Printed in Bulletin No. 51, Vol. 96.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.