

311-12-BZ

CEQR #13-BSA-053K

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 5, 2012 acting on DOB Application No. 320536997, reads in pertinent part:

Proposed Use Group 2 residential use in an M1-1 zoning district is contrary to Section 42-00 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the conversion of portions of the second, third, and fourth story of an existing four-story manufacturing building to residential use (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in the *City Record*, with continued hearings on April 29, 2014, and July 15, 2014, and then to decision on August 19, 2014; and

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

WHEREAS, Community Board 8, Brooklyn, recommends disapproval of the application; and

WHEREAS, the subject site located on the south side of Dean Street, between Classon Avenue and Franklin Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 78 feet of frontage along Dean Street, 120 feet of lot depth, and approximately 9,350 sq. ft. of lot area; and

WHEREAS, the site is occupied by an four-story manufacturing building with approximately 26,606 sq. ft. of floor area (2.85 FAR); and

WHEREAS, the applicant notes that the building was constructed around the early 20th Century, and has been occupied at various times by a confectionary, a lamp manufacturer, an automobile and electrical parts manufacturer, residential lofts, and a commercial printing company; most recently, portions of the building have been occupied as artists’ studios; and

WHEREAS, initially, the applicant proposed to convert the entire building to residential use (26,526 sq. ft. of residential floor area (2.84 FAR) and 13 dwelling

units); however, in response to the Board’s concerns, the proposal was modified to reflect the conversion of the first story to office use (Use Group 6) and the conversion of the second, third, and fourth stories of the building to residential use (Use Group 2), resulting in a reduction in proposed dwelling units from 13 to nine; and

WHEREAS, thus, the applicant now proposes 7,710 sq. ft. of commercial floor area (0.83 FAR) on the first story and a total of 18,522 sq. ft. of residential floor area (1.98 FAR) on the second, third, and fourth stories, for a combined floor area of 26,232 sq. ft. (2.81 FAR); and

WHEREAS, because, per ZR § 42-00, Use Group 2 is not permitted within the subject M1-1 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are the site’s unique physical conditions, which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: (1) the existing building’s obsolete characteristics; and (2) the site’s limited street access; and

WHEREAS, the applicant states that the building is obsolete for its original industrial purpose; as noted above, the building has been occupied by a variety of commercial and manufacturing uses over the years; however, the building is no longer attractive to conforming use on the upper stories in particular due to its relatively small floorplate, column spacing, archaic layout, inadequate ceiling heights, narrow stairwells and elevator, and its lack of loading berth; and

WHEREAS, as to the size of the floorplate, which is approximately 7,720 sq. ft. on the first, second, and third stories, and 3,368 sq. ft. on the fourth story, the applicant provided a land use study, which reflects that nearby manufacturing and warehouse uses have significantly larger floorplates than the subject building; and

WHEREAS, as to the column spacing and layout of the floors, the applicant asserts that the ubiquitous columns hamper the use of the building for as-of-right uses; specifically, for manufacturers, the columns form narrow maneuvering lanes that inhibit the use of trucks, forklifts, pallet jacks, and hand jacks, making the space inefficient and difficult to market; for retailers, the column condition interferes with the presentation of merchandise and reduces the amount of usable floorspace; storage tenants would also find the space unattractive, because they prefer large, open floorplates, which permit the efficient movement of goods within the facility; and

WHEREAS, as to the ceiling heights, the applicant states that ceiling heights vary from 8’-0” to 11’-0”; and

WHEREAS, the applicant asserts that such heights, when combined with the required 1’-6” clearance between sprinkler heads and any manufacturing operations, render the upper stories wholly unsuitable for conforming uses, such as a wholesale showroom, which would typically have a minimum ceiling height of 14’-0” or a warehouse, which would typically have a minimum

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ceiling height of 25'-0" to allow the stacking of goods on pallets; and

WHEREAS, as to the existing stairwells and elevator, the applicant asserts that they are inadequate to accommodate the material and personnel movement requirements of a conforming use; and

WHEREAS, specifically, the applicant states that the portions of the stairwells are only 3'-5" in width, which is three inches less than the minimum required under the building code for the manual transport of goods and equipment; in addition, the stairs are steeper than is permitted for a commercial or manufacturing use (but sufficient for residential use); and

WHEREAS, the applicant also states that the existing elevator has a width of 8'-2", a depth of 8'-4", and a maximum capacity of 4,000 lbs.; in contrast, freight elevators for manufacturing buildings often have depths ranging and from 10'-0" to 22'-0" and capacities of approximately 20,000 lbs.; the applicant notes that even if a modern elevator were installed, the existing elevator shaft is too small to accommodate an elevator that would be suitable for manufacturing use; and

WHEREAS, as to the lack of loading berth, the applicant states that whereas a viable manufacturing or warehouse building would have a loading berth with a depth of approximately 45'-0", the subject building has no loading berth and insufficient space to accommodate a loading berth; and

WHEREAS, in addition to the building's lack of loading berth, the applicant also states that the site's limited street access makes the site unsuitable for the delivery of goods by truck, which is required for both manufacturing and warehouse uses; and

WHEREAS, specifically, the applicant states that the site's only frontage is located along Dean Street, which is a narrow, one-way street; as such, trucks would be forced to block vehicular and pedestrian traffic while loading and unloading, which is both inefficient and potentially hazardous; and

WHEREAS, thus, the applicant contends that there are physical conditions that create practical difficulties in using the building and the site for a conforming use; and

WHEREAS, the applicant also contends that such physical conditions are unique, and submitted a land use study in support of that contention; and

WHEREAS, the applicant states that the study examined 29 sites with existing buildings with the subject M1-1 zoning district in the area bounded by Grand Avenue, Atlantic Avenue, Bergen Street, and Franklin Avenue; according to the study, each site had one or more of the following characteristics, which made it distinguishable from the subject site: (1) frontage on a major thoroughfare (rather than a narrow, one-way street); (2) availability of off-street parking (rather than no off-street parking at the site); (3) larger floorplates than the subject building; and (4) lawful non-conforming residential use; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when

considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right office building; (2) a lesser variance with office on the first and second stories and residential on the third and fourth stories; and (3) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to further support its assertion that the subject building was unsuitable for professional office space; and

WHEREAS, in response, the applicant's consultant analyzed 12 nearby office buildings and concluded that each of the 12 was occupied by not-for-profit institutions or government offices; in addition, the majority of buildings studied had a lobby with direct access to the street frontage, which the subject building lacks; as such, the applicant concluded that nearby buildings were not used as professional office space despite having layouts that would be more conducive to professional offices than the subject building; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject site'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 use 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 represents that the immediate area is characterized by a mix of industrial, commercial and residential uses, with a predominance of residential use, including 69 existing dwelling units within 400 feet of the site and an additional 59 dwelling units approved but not yet constructed; and

WHEREAS, the applicant notes that the subject block is mapped M1-1 only in the mid-block and that R6 zoning districts with commercial overlays are mapped along the eastern (Franklin Avenue) and western (Classon Avenue) sides of the block; and

WHEREAS, as for the immediately adjacent sites, the applicant states that directly east of the site is a three-story warehouse, directly west of the site is a vacant lot used for parking, directly south of the site are two four-story multiple dwellings, and directly north of the site (across Dean Street) is a fenced bus parking lot; and

WHEREAS, as to bulk, the applicant states that although the proposed 2.81 FAR exceeds the maximum permitted FARs in the subject M1-1 district (1.0 FAR for manufacturing uses; 2.4 FAR for community facility uses), the building has existed at the sight for nearly 100 years; further, the applicant states that the envelope

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will not change under the proposal; and

WHEREAS, the applicant notes that the site lies within an Industrial Business Zone and that its proposed use of 85 percent of the building's floor area for manufacturing uses is consistent with that designation; likewise, the applicant asserts that the proposed retail uses will complement (rather than duplicate) local commercial uses and add up to 1,300 jobs to the local economy; and

WHEREAS, accordingly, the Board finds that this action will neither 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, likewise, the Board finds, per ZR § 72-21(d), that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief, in accordance with ZR § 72-21(e); as noted above, the scope of the use variance was reduced in response to the Board's concerns; 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, Sections 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. 13BSA053K, dated July 8, 2013; 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

proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative, 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 within an M1-1 zoning district, the conversion of portions of the second, third, and fourth story of an existing four-story manufacturing building to residential use (Use Group 2), contrary to ZR § 42-00, *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 August 13, 2014" – nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: four stories; a maximum of 7,710 sq. ft. of commercial floor area (0.83 FAR) on the first story and a maximum of 18,522 sq. ft. of residential floor area (1.98 FAR) on the second, third, and fourth stories, for a combined maximum floor area of 26,232 sq. ft. (2.81 FAR); a maximum building height of 45'-0"; a minimum rear yard depth of 20'-11"; and a maximum of nine dwelling units;

THAT DOB will review and approve the required light and ventilation for the dwelling units;

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

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

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, August 19, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, August 19, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

